

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDDIE MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS and WHITNEY VAUGHAN, on behalf of themselves and all others similarly situated,

Appellants,

vs.

HG STAFFING LLC; AND MEI-GSR HOLDINGS LLC,

Respondents.

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**JOINT APPENDIX VOLUME 15 OF 16**

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**IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

EDDY MARTEL (also known as MARTEL-  
RORIGUEZ), MARY ANNE CAPILLA,  
JANICE JACKSON-WILLIAMS and  
WHITNEY VAUGHAN on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

HG STAFFING, LLC, MEI-GSR HOLDINGS,  
LLC d/b/a GRAND SIERRA RESORT, and  
DOES 1 through 50, inclusive,

Defendants.

Case No.: CV16-01264

**REPLY IN SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE, SUMMARY  
ADJUDICATION**

**POINTS AND AUTHORITIES**

**I. INTRODUCTION**

All of the claims alleged by Plaintiff Eddy Martel ("Martel") in the First Amended Class Action Complaint ("Complaint") are barred. As Plaintiffs concede that Martel's underlying wage claims are barred by the two years statute of limitations, his derivative waiting time penalty claims under NRS 608.040 and 608.050 fail as well. Martel's unfounded assertion that these claims did not accrue until thirty days after his employment ended is contrary to the law regarding accrual of claims, and the statutory language. His waiting time penalty claims accrued, at the latest, on the day his final wages were due, and cover only his final pay period. As the undisputed evidence



1 establishes that he suffered no daily overtime violation, or any other alleged violation, during his  
2 final pay period, GSR is entitled to summary judgment on all his claims.

3 Plaintiffs also do not dispute that Plaintiff Williams failed to exhaust the grievance  
4 procedures set forth in the collective bargaining agreement (“Culinary CBA”) that covered Williams.  
5 Plaintiffs’ assertion that the Culinary CBA is invalid because it was not signed has been repeatedly  
6 rejected by the courts. The undisputed evidence establishes that the Culinary Union has repeatedly  
7 affirmed the validity of the Culinary CBA in grievances, and in arbitration – stating in a written brief  
8 of October 24, 2016:

9 *Local 226 has been party to three successive collective-bargaining agreements at the hotel*  
10 *and casino that is now known as the Grand Sierra resort.* The first was in effect from 2001  
11 until 2006, when the hotel was known as the Reno Hilton. . . . The second CBA reflected a  
12 change in ownership and in the name of the property and ran from 2009 to 2010. . . *The third*  
*and current CBA was ratified on November 17, 2011. . .*

13 Motion, Ex. 2, Hilden Dec., ¶7, Ex. E, pp. 1-2 (emphasis added). Likewise, the failure to follow  
14 grievance procedures in the Culinary CBA when pursuing state law statutory wage claims mandates  
15 dismissal. Moreover, Plaintiff Williams’ statutory overtime claims are without merit because, under  
16 Nevada law, those statutory overtime provisions do not apply because the collective bargaining  
17 agreement provides otherwise for overtime.

18 Finally, contrary to Plaintiffs’ argument, employees are not entitled to seek class certification  
19 on behalf of GSR employees that are represented by a union because the union is the exclusive  
20 representative with respect to wages. Federal law prohibits former employees from using a class  
21 action to usurp the Union’s role as the exclusive representative for an employee’s bargaining unit.

22 Accordingly, as Plaintiffs’ claims have no merit, this Court should grant GSR’s motion for  
23 summary judgment.

## 24 **II. ARGUMENT**

### 25 **A. GSR is Entitled to Summary Judgment On All of Martel’s Claims.**

26 In the Court’s June 7, 2019 Order Granting, In Part, And Denying In Part, Motion to Dismiss  
27 (“the Order”), the Court found a two-year statute of limitations applies to this case, so that claims  
28 accruing prior to June 14, 2014 are barred by the statute of limitations. Order, p. 7, ll. 8-10.

1 Plaintiffs admit that Plaintiff Martel clocked out from his final shift with GGR on June 13, 2014, at  
2 12:26 am, which was 2 years and 1 day from the day that Plaintiffs filed their complaint. *See*  
3 Plaintiffs' Response to Defendants' Motion for Summary Judgment/Summary Adjudication  
4 ("Resp."), at 2:11-13, 6:16-21, 8:21-22. Plaintiffs apparently do not dispute that Plaintiff Martel's  
5 first cause of action for unpaid wages, second cause of action for failure to pay minimum wages, and  
6 third cause for action for failure to pay overtime are barred by the two-year statute of limitations.  
7 They wrongly assert, however, that his fourth cause of action for waiting time penalties under NRS  
8 608.040 and 608.050 is timely because "[a] claim for under NRS 608.040 and 608/050 does not fully  
9 accrue until 30 days after the last day an individual is employed," and "[h]is continuation wages. . .  
10 did not fully accrue until July 13, 2014 -- 30 days after his separation from employment." Resp., at  
11 10:21-22; 11:24-25. Plaintiffs cite no authority for this argument, and it is contrary to the law  
12 regarding accrual of claims and the statutory language.

13 A cause of action accrues when the wrong occurs and a party sustains injuries for which  
14 relief could be sought." *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990). NRS  
15 608.040 provides in pertinent part: "If an employer *fails to pay . . . [o]n the day the wages or*  
16 *compensation is due* to an employee who resigns or quits, the wages or compensation of the  
17 employee continues at the same rate from the day the employee resigned, quit or was discharged  
18 until paid or for 30 days, whichever is less" (emphasis added). <sup>1</sup> Based on the statutory language, the  
19 wrong occurs, and the employee sustains injury, when an employer fails to pay "on the day the  
20 wages or compensation is due," as that is what triggers the penalty. Thus, the claim accrues at that  
21 time.

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22 <sup>1</sup> Notably, NRS 608.050 does not apply to Martel because he voluntarily resigned his employment.  
23 *See* Resp., p. 8:21-22. The statute -- entitled "Wages to be paid at termination of service: Penalty;  
24 employee's lien" -- provides for up to 30 days of wages when an employer "*shall discharge or lay*  
25 *off employees*" without either (1) first paying them the amount of any wages or salary then due  
26 them. . . or. . . (2) fail[ing], or refus[ing] on demand, to pay them in like money, or its equivalent, the  
27 amount of any wages or salary at the time the same becomes due and owing to them under their  
28 contract of employment . . . " NRS 608.050 (emphasis added). Further, like NRS 608.040, it is  
triggered by an employer refusing to pay the amount of wages "then due" or "at the time the same  
becomes due and owing."

1 Further, NRS 608.040 is clearly referring to the wages or compensation due at the time an  
2 employee is terminated or resigns – meaning the wages or compensation for the final pay period.  
3 This makes sense, as the statute is intended to promote timely payment of final wages to employees  
4 whose employment has ended, when the usual motivation of employers to timely pay employees so  
5 that they continue working is gone. To the extent that Plaintiffs claim the statute applies to *any*  
6 failure to pay ever during an employee’s employment, such argument ignores the purpose of a  
7 statute of limitation, and would produce an absurd result. The purpose of a statute of limitations is to  
8 protect defendants “from stale claims and the attendant uncertainty they cause.” *Costello v. Casler*,  
9 127 Nev. 436, 441, 254 P.3d 631, 635 (2011). If NRS 608.040 applied to any wages other than final  
10 wages, an employee would be entitled to a penalty of up to thirty (30) days wages even of the  
11 employer had mistakenly failed to pay the wage for a single hour, ten (10) years prior to his  
12 separation. This is nonsensical and flatly contrary to the purpose of a statute of limitations. The  
13 only logical construction is that statute applies to final wages and compensation – meaning those in  
14 the last pay period.

15 Clearly, employees are barred from establishing a failure to pay wages necessary for waiting  
16 time penalties if there is no violation when the statute of limitations for the underlying wage or  
17 compensation claim has expired. In *Turner v. Mandalay Sports Entm't, LLC*, 124 Nev. 213, 222 &  
18 n.31, 180 P.3d 1172, 1178 & n.31, (2008), the Nevada Supreme Court explained that when a  
19 derivative claim is dependent on the success of a underlying claim and the underlying “claim having  
20 not been established,” then the derivative claim “must fail as well.” *See also Reed Tool Co. v.*  
21 *Copelin*, 610 S.W.2d 736, 738–39 (Tex. 1980) (explaining that a claim “was derivative” when  
22 underlying liability must be shown “as a prerequisite to recovery” and holding “a defense that tends  
23 to constrict or exclude the [underlying liability] will have the same effect on the [derivative]  
24 action”). In *Maes v. El Paso Orthopaedic Surgery Grp., P.A.*, 385 S.W.3d 694, 699 (Tex. App.  
25 2012), the Texas Court of Appeals held that when “the two-year statute of limitations ran on [the]  
26 underlying claim,” then the “right to sue for [the derivative claim] was “extinguished” as well. The  
27 court reasoned that when a claim “is derivative in nature and owes its existence to” an underlying  
28 claim, then the derivative claim “is subject to the same defenses the [underlying] action would have

1 been subject to.” *Id.*; see also 51 Am.Jur.2d Limitation of Actions § 14 (2011) (“A derivative claim  
2 is ordinarily time-barred, where the original claim is barred by the statute of limitations, since  
3 derivation claims are governed by the statute of limitations for the source claims”). Courts have  
4 consistently held that derivative claims are barred when the statute of limitation on the underlying  
5 claim has expired.<sup>2</sup> Accordingly, the only possible claim not barred would be a claim based on  
6 Martel’s wages for the final pay period.<sup>3</sup> See *Cuadra v Millan*, 17 Cal.4th 855, 859 (Cal. 1998) (“A  
7 cause of action for unpaid wages accrues when the wages first become legally due, i.e., on the  
8 regular payday for the pay period in which the employee performed the work; when the work is  
9 continuing and the employees is therefore paid periodically and separate and distinct cause of action  
10 accrues on each payday, triggering on each occasion the running of a new period of limitations.”)

11 Under NRS 608.030, compensation is due to an employee who resigns on either the day on  
12 which the employee would have regularly been paid, or seven days after the employee resigns,  
13 whichever is earlier. Martel’s next regular pay date would have been June 19, 2014. Ex. 1,  
14 Williams Dec., ¶3. Seven days from his last day was June 20, 2014, so his final wages were due by  
15 June 19, 2014 – the earlier date. This is the latest possible date on which a claim accrued under NRS

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16  
17 <sup>2</sup> See *Agar Corp., Inc. v. Electro Circuits Int’l, LLC*, 580 S.W.3d 136, 142-44 (Tex. 2019) (agreeing  
18 with the “courts of last resort in Maryland, Nebraska, Virginia, and West Virginia” that a “derivative  
19 . . . claim should share both accrual and the limitations period of the underlying wrong”); *Franklin*  
20 *v. Little Co. of Mary Hosp.*, 2017 IL App (1st) 161858-U, ¶ 45, 2017 WL 4173523, at \*12  
21 (September 19, 2017) (holding that “if a plaintiff’s underlying cause of action is not filed within the  
22 applicable statute of limitations, his [derivative] claim is also time-barred”); *Sterenbuch v. Goss*, 266  
23 P.3d 428, 436 (Colo. App. 2011) (holding where the “underlying . . . claim is time-barred, so too is  
24 his [derivative] claim”); *Campbell v. Brown & Williamson Tobacco Corp.*, Case No. CV 02-0184-  
25 KD-C, 2006 WL 8437669, at \*2 (S.D. Ala. May 17, 2006) (holding when an underlying “claim is  
26 barred by applicable statute of limitations” then the derivative claim “would be barred”); *Doe v.*  
27 *Archdiocese of Milwaukee*, 565 N.W.2d 94, 115 (Wis. 1997) (holding “derivative causes of action . .  
28 . accrued at the same time that the underlying . . . claims accrued, and similarly would be barred by  
the statute of limitations”); *Patterson v. Am. Bosch Corp.*, 914 F.2d 384, 387 n.4 (3d Cir. 1990)  
(holding “derivative claims [are] governed by the statutes of limitations of the source claims”).

3 Martel was paid every two weeks. Ex. 1, Declaration of Cynthia Williams (“Williams Dec.”), ¶3.  
Wages for the pay period just before Martel’s final pay period were paid on the regular payday of June  
5, 2014. Claims based on pay period covered by the June 5, 2014 paycheck, and all claims for prior  
pay periods, accrued prior to June 14, 2014 and are clearly barred.

1 608.040. Though Martel filed this action within the two years of June 19, 2014, GSR is nonetheless  
2 entitled to summary judgment because Martel cannot establish any violation for the time period  
3 covered by his final paycheck, which was May 31 through June 13, 2014. Ex. 1, Williams Dec., ¶3.

4 **No Daily Overtime as a Result of Shift-Jamming:** Martel alleges that he was subject to  
5 “shift jamming,” received a letter about unpaid wages, was on a list of employees to whom checks  
6 were mailed regarding unpaid overtime based on shift jamming, and was a former employee at the  
7 time. Resp. at 9-10. He alleges that since he “was not compensated all of his wages due and owing  
8 at the time of his separation from employment on June 13, 2014, he is entitled to recover 30-days of  
9 continuation wages under NRS 608.040 and 30-days of continuation wages under NRS 608.050.”  
10 Resp. at 10:3-6. This is without merit. Notably, the “Tony Report,” attached as Exhibit 1 to  
11 Plaintiff’s First Amended Complaint, states that out of the 362 shifts that Martel worked for GSR  
12 during his employment, he experienced a “jammed shift” with an “overtime impact” a total of only  
13 21 times, and does *not* allege that any of those occurred in Martel’s final pay period. See Ex. 6 to  
14 Tony Report, p. 1. Further, as set forth below, an examination of Martel’s time records (see Motion  
15 Ex. 1, Candela Dec., Ex. A) shows that he never worked more than 8 hours within a 24-hour period  
16 during his final pay period – meaning he was *not* entitled to any daily overtime:

- 17 • Martel did not work on 5/30/14, and therefore has no timeclock records for that day
- 18 • **5/31/14:** Clocked in at 9:59 and out at 13:12 (3 hrs and 13 mins) then clocked in and 13:47  
19 and clocked out 17:34 (3 hours and 47 minutes) **for total of 7 hours**; did not work more  
20 than 8 hours in the 24-hour period starting at 9:59 on 5/31 and ending at 9:59 on 6/1
- 21 • **6/1/14:** Clocked in at 9:55 and clocked out at 12:42 (2 hrs and 47 mins) and clocked in at  
22 13:10 and clocked out at 18:23 (5 hrs and 13 mins) **for a total of 8 hours**; did not work  
more than 8 hours in the 24-hour period starting at 9:55 on 6/1 and ending at 9:55 on 6/2
- 23 • **6/3/14:** Clocked in at 18:00 and out at 23:42 **for a total of 5 hours and 42 minutes**; did not  
24 work more than 8 hours in the 24-hour period starting at 18:00 on 6/3 and ending at 18:00 on  
6/4
- 25 • **6/4/14:** Clocked in at 17:59 and out at 0:11 for a **total of 6 hours and 12 minutes**; did not  
26 work more than 8 hours in the 24-hour period starting at 17:59 on 6/4 and ending at 17:59 on  
27 6/5

- 1 • **6/5/14:** Clocked in at 18:00 and out at 0:22 for a **total of 6 hours and 22 minutes**; did not  
2 work more than 8 hours in the 24-hour period starting at 18:00 on 6/5 and ending at 18:00 on  
3 6/6
- 4 • **6/7/14:** Clocked in at 9:56 and out at 11:39 (1 hr and 43 mins) then clocked in at 12:07 and  
5 out at 16:48 (4 hrs and 41 mins) for a b **6 hours and 24 minutes**; did not work more than 8  
6 hours in the 24-hour period starting at 9:56 on 6/7 and ending at 9:56 on 6/8
- 7 • **6/8/14:** Clocked in at 10:04 and out at 13:36 (3 hrs and 32 mins) then clocked in at 14:06 and  
8 out at 17:46 (3 hrs and 40 mins) for a **total of 7 hours and 12 minutes**; did not work more  
9 than 8 hours in the 24-hour period starting at 10:04 on 6/8 and ending at 10:04 on 6/9
- 10 • **6/10/14:** Clocked in at 18:06 and out at 0:34 for a **total of 6 hours and 28 minutes**; did not  
11 work more than 8 hours in the 24-hour period starting 18:06 on 6/10 and ending at 18:06 on  
12 6/11
- 13 • **6/11/14** Clocked in at 18:01 and out at 0:36 for a **total of 6 hours and 35 minutes**; did not  
14 work more than 8 hours in the 24-hour period starting 18:01 on 6/11 and ending at 18:01 on  
15 6/12
- 16 • **6/ 12/13** Clocked in at 18:10 and out at 0:26 for a **total of 6 hours and 16 minutes**; did not  
17 work more than 8 hours in the 24-hour period starting 18:10 on 6/12 and ending at 18:10 on  
18 6/13, as his employment ended after his clockout of 0:26.

19 **No Off-The-Clock Banking:** Martel also alleges that he “was required to collect his bank of  
20 money at the dispatch cage prior to proceeding to his workstation and without compensation,” and  
21 that at the end of his regularly scheduled shifts, “was required to reconcile and deposit his cash bank  
22 to the same dispatch cage without compensation.” Complaint, ¶18. A comparison of the times that  
23 Martel actually clocked in and out to when he got and returned his bank -- as reflected in cage  
24 dispatch records -- shows that in his final pay period he always got his bank after he clocked in and  
25 returned it before he clocked out. Ex. 2, Supplemental Declaration of Eric Candela, ¶¶1-5 and Ex. A  
26 thereto.

27 **No Pre-Shift Meetings:** The Complaint also alleges that Martel was required to attend pre-  
28 shift meetings off the clock and without pay. Complaint, ¶34. This is flatly contradicted by Martel’s  
deposition testimony. At no time during his deposition did Martel ever mention attending pre-shift  
meetings – including when asked to describe the process he went through prior to clocking in each  
day. Ex. 3, Supplemental Declaration of Susan Heaney Hilden (“Hilden Dec.”), ¶8, and Ex. A  
thereto, pp. 10:7-27:6.

Accordingly, GSR is entitled to summary judgment on all of Plaintiff Martel's claims.

**B. Plaintiff Williams' Claim for Overtime Is Barred Pursuant to NRS 608.018 Because the Culinary CBA Provides Otherwise for Overtime.**

Plaintiffs do not dispute that the overtime provisions of NRS 608.018 do not apply, to "[e]mployees covered by collective bargaining agreements which provide otherwise for overtime." See NRS 608.018(3)(e) (emphasis added) ("The provisions of subsections 1 and 2 do not apply to . . . Employees covered by collective bargaining agreements which provide otherwise for overtime"). Instead, Plaintiffs wrongly argue that Plaintiff Williams is not subject to a valid CBA and even if she was, the CBA does not provide otherwise for overtime. See Resp. at 15:5 – 20:18. Neither argument has any merit.

**1. Plaintiff Williams Was Subject to the Culinary CBA throughout the Entire Term of Her Employments with GSR.**

Plaintiffs' argument that the Culinary CBA is unenforceable is entirely based on their unsupported contention that an unsigned CBA is not valid. See Resp. at 16:23-24. Plaintiffs cite no authority to support this contention and simply ignore the overwhelming authority to the contrary. See *Line Const. Ben. Fund v. Allied Elec. Contractors, Inc.*, 591 F.3d 576, 580 (7th Cir. 2010) (holding a "signature to a collective bargaining agreement is not a prerequisite to finding an employer bound to that agreement"); *N.L.R.B. v. Haberman Const. Co.*, 618 F.2d 288, 294 (5th Cir. 1980) (holding that "a union and employer's adoption of a labor contract is not dependent on the reduction to writing of their intention to be bound"); *Warehousemen's Union Local No. 206 v. Cont'l Can Co.*, 821 F.2d 1348, 1350 (9th Cir. 1987) (explaining that collective bargaining agreement are enforceable "regardless of whether either party later refuses to sign a written draft"); *N.L.R.B. v. Electra-Food Mach., Inc.*, 621 F.2d 956, 958 (9th Cir. 1980) (holding oral agreement was sufficient to create a binding collective agreement even though the written agreement was unsigned).

Plaintiffs provide no evidence whatsoever to refute the fact that both GSR and the Culinary Union recognize that the unsigned Culinary CBA is a valid enforceable agreement. Larry Montrose, Human Resources Director for GSR, affirmed the Culinary CBA covered Plaintiff Williams from 2010 and throughout her entire term of employment. Motion, Ex. 3, Montrose Dec., ¶¶ 2-3.

1 Plaintiffs cannot and do not dispute that Culinary Union representatives testified under oath in  
2 August 2016 that the Culinary CBA was ratified by the Union on November 17, 2011, and was in  
3 effect from that point forward. Motion, Ex. 2, Hilden Dec., ¶¶4-6, and Ex. D thereto. Plaintiffs  
4 cannot and do not dispute that the Culinary Union repeatedly affirmed in grievances, in arbitration,  
5 and in a post-arbitration written brief that the Culinary CBA was binding, as set forth below:

- 6 • The Culinary Union filed grievances pursuant to the Culinary CBA, and pursued arbitration  
7 for grievances that were not resolved to its satisfaction under the Culinary CBA. Motion,  
8 Ex. 2, Hilden Dec., ¶3. For example, the Culinary Union filed a grievance dated June 23,  
9 2015 regarding compensation of slot technicians. *Id.*, and Ex. B thereto.
- 10 • The Culinary Union requested arbitration of the June 23, 2015 grievance in a letter dated  
11 October 1, 2015. *Id.*, and Ex. C thereto.
- 12 • The arbitration was held on August 25, 2016, with attorney Susan Hilden representing GSR  
13 and attorney David Barber of Davis, Cowell & Bowe representing the Culinary Union. *Id.*,  
14 ¶4.
- 15 • At the August 25, 2016 arbitration, the parties designated the Culinary CBA as Joint Exhibit  
16 1, and it was admitted into evidence by the arbitrator. *Id.*, Ex. D thereto, p. 3:14-17  
17 (describing Joint Exhibit 1 as “Collective Bargaining Agreement between Worklife  
18 Financial, Inc. dba Grand Sierra Resort and Culinary Workers Union Local 226 2010-20  
19 (blank)”); p. 5: 13-18 (arbitrator stating: “We marked some joint exhibits. Joint Exhibit No. 1  
20 is a Collective Bargaining Agreement from 2010 to 20-whatever. . .)
- 21 • Culinary Union attorney Barber called as a witness Nicolaza de la Puente, who testified she  
22 had been the Culinary Union Local 226 representative for Reno for 14 years and she was  
23 present for negotiations of the Culinary CBA, which was ratified on November 17, 2011.  
*Id.*, Ex D thereto, at 16: 10-23; 17:7-12; 24:1-25:-14.
- 24 • Culinary Union attorney Barber called as a witness J.T. Thomas, who testified that he was  
25 the Director of Legal Affairs for the Culinary Union for 8 years, and was the Union’s chief  
26 negotiator for the Culinary CBA, referred to as the “current contract.” *Id.*, Ex. D at 53:15–  
27 54:4, 55:21-56:3.
- 28 • In its Post-Hearing Brief of October 24, 2016, the Culinary Union stated:

*Local 226 has been party to three successive collective-bargaining agreements at the hotel and casino that is now known as the Grand Sierra resort.* The first was in effect from 2001 until 2006, when the hotel was known as the Reno Hilton. (Union Exhibit [“UX”]-1.) The second CBA reflected a change in ownership and in the name of the property and ran from 2009 to 2010. (UX-2.) *The third and current CBA was ratified on November 17, 2011.* (Joint Exhibit [“JX”]-1; Transcript [TR” 25:14.)  
*Id.*, Ex. E thereto, pp. 1-2 (emphasis added).



Both GSR and the Culinary Union have specifically affirmed that the Culinary CBA was in effect for the entire tenure of Plaintiff Williams' employment. As both GSR and the Culinary Union have treated the Culinary CBA as binding, Plaintiffs' unsupported argument to the contrary has no merit.

**2. The Culinary CBA Provides "Otherwise for Overtime" and Therefore, Pursuant to NRS 608.018(3)(e), Plaintiff Williams Is *Not* Entitled to Statutory Overtime under NRS 608.018.**

The Culinary CBA provides otherwise for overtime and therefore, pursuant to NRS 608.018(3)(e), the overtime provisions of NRS 608.018 do *not* apply. Article 9.01 of the CBA, entitled "WORK SHIFTS, WORKWEEK, AND OVERTIME," states:

The workweek pay period shall be from Friday through Thursday. For purposes of computing overtime, for an employee scheduled to work five (5) days in one (1) workweek, any hours in excess of eight (8) hours in a day or forty (40) hours in a week shall constitute overtime. For an employee scheduled to work four (4) days in one (1) workweek, any hours worked in excess of ten (10) hours in a day or forty (40) hours in a week shall constitute overtime. . . . Employees absent for personal reasons on one (1) or more of their first five (5) scheduled days of work in their workweek shall work at the Employee's request on a scheduled day off in the same workweek at straight time.

*See* Motion, Ex. 3, Montrose Declaration, Exhibit A thereto, Culinary CBA, at p. 15, Art. 9.01.

Contrary from Plaintiffs' claim the Culinary CBA's provision for overtime is *not* identical to the overtime provision in NRS 608.018. *See* Op. at 20:14. Here, the Culinary CBA clearly provides otherwise for overtime and is therefore exempt from NRS 608.018. Most notably, unlike NRS 608.018(1), the Culinary CBA provides for overtime regardless of whether the employee makes more than 1 ½ times the minimum wage. Additionally, the most sensible interpretation of the CBA's overtime provision is that employees are entitled to overtime for working more than eight hours in a day *only if* they are "scheduled to work five (5) days in one (1) workweek" pay period (Friday through Thursday). NRS 608.018 provides for overtime regardless of how many days are worked in a week. Moreover, under the Culinary CBA, employees who work five days in one workweek should not be entitled to overtime for working more than eight hours in a day if they miss one of their scheduled days and work an alternate day. NRS 608.018 has no similar limitation. Also,

1 unlike NRS 608.018(3) which provides numerous exception to the statutory overtime requirement,  
2 the Culinary CBA has no similar exceptions.

3 Finally, the Culinary CBA provides for overtime when the employee works “in excess of  
4 eight (8) hours in a day,” and does not use the specifically defined “workday” used in NRS 608.018  
5 (“More than 8 hours in any workday”). NRS 608.0126 defines “workday” as “a period of 24  
6 consecutive hours which begins when the employee begins work.” The Culinary CBA does not  
7 define the term “day.” In such cases, words in the CBA are given their ordinary meaning. *See*  
8 *Garcia v. Dep't of Homeland Sec.*, 780 F.3d 1145, 1147 (Fed. Cir. 2015) (holding that when  
9 interpreting a collective-bargaining agreement, the “words in the agreement” are given “their  
10 ordinary meaning unless the parties mutually intended and agreed to an alternative meaning”). The  
11 ordinary meaning of the word “day” is a twenty-four hour period beginning at midnight. *See In re*  
12 *Walkup*, 122 S.W.3d 215, 217 (Tex. App. 2003) (holding the “ordinary meaning of ‘day’ is a  
13 calendar day, which means the 24-hour period of time beginning immediately after midnight of the  
14 previous day and ending at the next midnight”); *Husebye v. Jaeger*, 534 N.W.2d 811, 814 (N.D.  
15 1995) (“a day extends over the 24 hours from one midnight to the next midnight”); *State v. Sheets*,  
16 338 N.W.2d 886, 886 (Iowa 1983) (the “general rule is that when the word ‘day’ is used it means  
17 calendar day which includes the entire day from midnight to midnight); *Moag v. State*, 31 N.E.2d  
18 629, 632 (Ind. 1941) (“when the word ‘day’ is used in a statute or in a contract, it means the twenty-  
19 four hours,” “running from midnight to midnight”). Accordingly, when an employee covered by the  
20 Culinary CBA works on Monday from 9 to 5, then on Tuesday from 8 to 4, the employee is not due  
21 overtime under the CBA, while the employee may have been due overtime NRS 608.018, if the  
22 employee had not been covered by the CBA.

23 These express differences between NRS 6018.018 and the Culinary CBA conclusively  
24 demonstrate that the Culinary CBA provides otherwise for overtime. *See Black's Law Dictionary*  
25 (6th ed. 1990) (defining “otherwise” as meaning “[i]n a different manner; in another way, or in other  
26  
27  
28

ways”).<sup>4</sup> In fact, the Culinary CBA expressly recognizes that it provides otherwise for overtime.

Article 9.01 of the Culinary CBA expressly provides:

This provision will remain in effect for the duration of this Agreement. However, at the expiration of the Agreement, the Employer shall have the right to compute and pay overtime in accordance with the provisions of existing federal and state law, and Union employees shall not have the right to overtime pay above and beyond the applicable federal and state law requirements.

There would be no need to revert to overtime under existing federal and state law unless the overtime provisions in the Culinary CBA were different from those in NRS 608.018. Accordingly, the Culinary CBA does provide otherwise for overtime, and therefore Plaintiff Williams cannot maintain a claim for overtime under NRS 608.018. *See Wuest v. California Healthcare W.*, Case No. 3:11-CV-00855-LRH, 2012 WL 4194659, at \*5 (D. Nev. Sept. 19, 2012) (holding that overtime guarantees of NRS 608.018 are suspended where the CBA “provides otherwise” for overtime payments—that is, when the CBA contains a negotiated provision on the same subject but different from the statutory provision”); *Jacobs v. Mandalay Corp.*, 378 F. App’x 685, 687 (9th Cir. 2010) (ruling that “section 608.018 exempts from coverage those employees ‘covered by collective bargaining agreements which provide otherwise for overtime’”). This Court should therefore grant summary judgment in favor of GSR on Williams’ Third Cause of Action for overtime pursuant to NRS 608.018.

**C. Plaintiff Williams’ Clams for State Law Claim for Wages and Overtime Are Barred for Failing to Exhaust Grievance Procedures of the Collective Bargaining Agreement.**

Plaintiffs fail to cite any authority for their argument that Plaintiff Williams need not exhaust the grievance procedures set forth in the Culinary CBA, or face dismissal of the employee’s state law wage and overtime claims. *See* Resp. at 12:6-8. Instead, Plaintiffs wrongly argue that Plaintiff Williams was not subject to a valid CBA because it is unsigned. *See* Resp. at 12:5-7, 15:27 – 17-17.

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<sup>4</sup> Plaintiffs imply that providing “otherwise for overtime” requires that the Culinary CBA provide overtime above what is required by NRS 608.018. *See* Resp. at 19:21-14. The plain meaning of the word “otherwise” only requires that CBA provide overtime in a different manner without imposing any conditions on the manner in which the overtime is provided. Nevertheless, as set forth above, in some instances the Culinary CBA provides even greater protections than NRS 608.018.

1 As already set forth, the Culinary CBA was valid and binding throughout Plaintiff Williams’ entire  
2 term of employment with GSR.

3 Nevertheless, Plaintiffs also wrongly assume that because certain courts have held that  
4 certain federal claims may be pursued without exhausting CBA grievance procedures, those decision  
5 apply equally to state law statutory wage claims. Plaintiffs offer no support for their argument that  
6 Plaintiff William’s state statutory wage and overtime claims need not be exhausted under the binding  
7 Culinary CBA. In *Barton v. House of Raeford Farms, Inc.*, 745 F.3d 95, 107–09 (4th Cir. 2014), the  
8 Fourth Circuit held that state statutory wage claims of plaintiffs should be “dismissed as preempted  
9 by § 301 of the LMRA” when plaintiffs “did not pursue the grievance and arbitration procedures  
10 provided by the CBA” because “any entitlement the plaintiffs have in this case to unpaid wages  
11 under the [state’s] Wages Act must stem from the CBA that governed the terms and conditions of  
12 their employment, including their wages.” Courts have uniformly reached this same conclusion.  
13 See *Cavallaro v. UMass Mem’l Healthcare, Inc.*, 678 F.3d 1, 7-9 (1st Cir. 2012) (holding that a  
14 statutory state-law wage claim could only be asserted after exhausting the grievance procedures of  
15 the collective bargaining agreement because those claims necessarily relied on the amount of wages  
16 provided in the collective bargaining agreement even if those amounts were altered or enlarged by  
17 state law); *Wheeler v. Graco Trucking Corp.*, 985 F.2d 108, 113 (3d Cir. 1993) (holding that before,  
18 asserting state law statutory wage claims, plaintiff “was first required to attempt to make use of the  
19 exclusive grievance and arbitration procedures contained in the collective bargaining agreement”);  
20 *Kostecki v. Dominick's Finer Foods, Inc. of Illinois*, 836 N.E.2d 837, 842-44 (Ill. App. 2005)  
21 (affirming dismissal of the employees’ state law statutory wage and overtime claims when the  
22 collective bargaining agreement “provides for how overtime pay is to be calculated” and provides  
23 “how employees are to be paid” because the “resolution of a state law claim [therefore] depends on  
24 an analysis of the terms of the agreement, [and] the claim must either be arbitrated as required by the  
25 collective bargaining agreement or dismissed as preempted under section 301 of the Labor  
26 Management Relations Act”).<sup>5</sup>

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27  
28 <sup>5</sup> Plaintiffs cite various cases purporting to hold that federal FLSA and discrimination claims need not  
be exhausted through the grievance procedures found in a collective bargaining agreement. See Op.  
13.

1 The Culinary CBA expressly specifies amount, method, and timing of payment of wages and  
2 overtime. See Motion, Ex. 3, Montrose Dec., and Exhibit A thereto, Culinary CBA, at pp. 9, 15, and  
3 CBA Exhibit 1. As already set forth, the Culinary CBA provides otherwise for overtime, is therefore  
4 exempt from NRS 608.018, and therefore is subject to the grievance procedures of the CBA. The  
5 Culinary CBA also governs all aspects of covered employees' right to wages including: deduction  
6 for union dues (Article 3.03); method of payment of wages (Article 5.01); deductions for insurance  
7 (Article 5.03(a)); deductions for cash shortages (Article 5.03(b)); payment of gratuities (Article  
8 5.04); deduction for health insurance costs (Article 5.07); wage scale to be paid to employees  
9 (Article 5.08); wages when working combined jobs (Article 5.09); wages paid when employee  
10 requests voluntary early shift release (Article 7.01); wages paid when employee subject to  
11 involuntary shift release (Article 7.02); days off allowed (Article 9.02); prohibition against multiple  
12 shifts in the same day (Article 9.03); paid time off (Article 11); and paid meal and other breaks  
13 (Article 14). In determining the wages owed to any employee covered by the Culinary CBA, each of  
14 these provisions would have to be analyzed and interpreted to determine the appropriate pay for  
15 Plaintiff Williams.

16 Plaintiff Williams' statutory claims for wages or overtime therefore are not independent of  
17 the collective bargaining agreement, but are expressly dependent upon finding a breach of that  
18 agreement to maintain those claims. Because Plaintiff Williams' statutory claims for wages or  
19 overtime are expressly dependent upon finding a breach of the Culinary CBA to maintain those  
20 claims, she was required to pursue those claims by means of the grievance procedures set forth in the  
21 collective bargaining agreement. Williams, however, concedes that she failed to exhaust the  
22 grievance procedures in the Culinary CBA and therefore GSR is entitled to summary judgment on  
23

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24 at 12:17-28, n.3. These cases do not purport to overturn the overwhelming authority that state law  
25 wage and overtime claims must be exhausted or be dismissed. See *Curtis v. Irwin Indus., Inc.*, 913  
26 F.3d 1146, 1152-55 (9th Cir. 2019) (holding that state statutory overtime claims were preempted by  
27 the LMRA when the overtime claim required an "analysis of the CBA" in contrast with  
28 "discrimination in employment [claims which] . . . will not necessarily be preempted, even when the  
plaintiff is covered by a CBA"); *Barton*, 745 F.3d at 101, 108 (holding that plaintiffs' statutory state  
wage claims were "preempted by § 301 of the LMRA" in contrast to FLSA claims).

1 her first, third, and fourth causes of action.<sup>6</sup> *See Union Pac. R. Co. v. Harding*, 114 Nev. 545, 550,  
2 958 P.2d 87, 90 (1998) (holding complaint was properly dismissed when state law claims were  
3 preempted by federal labor law); *see also Barton v. House of Raeford Farms, Inc.*, 745 F.3d 95,  
4 106-09 (4th Cir. 2014) (holding statutory state-law claim for wages for time spent donning and  
5 doffing protective gear, etc. preempted because “any entitlement the plaintiffs have in this case to  
6 unpaid wages under the [State] Wages Act must stem from the CBA that governed the terms and  
7 conditions of their employment, including their wages”); *Cavallaro v. UMass Mem'l Healthcare,*  
8 *Inc.*, 678 F.3d 1, 8 (1st Cir. 2012) (holding a statutory state-law wage claim was preempted because  
9 it relied on the amount of wages provided in the CBA even if those amounts were altered or enlarged  
10 by state law); *Mowry v. United Parcel Serv.*, 415 F.3d 1149 (10th Cir. 2005) (holding a state-law  
11 wage claim were preempted because the court would have to resolve issues regulated by the CBA  
12 such as what work plaintiff performed and when, whether he was paid or underpaid, and the amount  
13 of the shortfall to resolve the complaint); *Kostecki*, 836 N.E.2d at 842 (explaining that “[f]ederal  
14 labor policy provides that when resolution of a state law claim depends on an analysis of the terms of  
15 the agreement, the claim must either be arbitrated as required by the collective bargaining agreement  
16 or dismissed as preempted under section 301 of the Labor Management Relations Act”); *Atchley v.*  
17 *Heritage Cable Vision Associates*, 101 F.3d 495,500 (7th Cir. 1996) (holding that statutory state-law

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18 <sup>6</sup> Plaintiffs wrongly argue that even though Plaintiff Williams is not entitled to pursue her claims for  
19 wages and compensation for failing to exhaust the grievance procedures in the Culinary CBA, she is  
20 still entitled to pursue her waiting time penalty claim under NRS 608.040 or NRS 608.050. *See Resp.*  
21 *at 20:19 – 21:24.* As already set forth, waiting time penalty claims are derivative wage claims because  
22 NRS 608.040 requires proof that the “employer fail[ed] to pay . . . [o]n the day the wages or  
23 compensation is due” in order to establish the penalty claim. Waiting time penalty claims under NRS  
24 608.050 are likewise derivative to wage or salary claims, because such claims require proof that the  
25 employer failed pay “the amount of any wages or salary then due. . . .” Because Plaintiff Williams  
26 cannot establish her underlying regular wage claims based on her failure to exhaust the Culinary  
27 CBA’s grievance procedures, then her derivative waiting time penalty claim fails as well. *See Turner*,  
28 124 Nev. at 222 & n.31, 180 P.3d at 1178 & n.31; *see also Silva v. Medic Ambulance Serv., Inc.*, Case  
No. 2:17-CV-00876-TLN-CKD, 2020 WL 2404873, at \*3 (E.D. Cal. May 12, 2020) (dismissing  
derivative claims when employee’s wage claims were dismissed for failing to exhaust the grievance  
procedures set forth in the CBA”); *Santos v. TWC Admin. LLC*, Case No. CV-1304799-MMM-CWX,  
2014 WL 12558274, at \*14 (C.D. Cal. Nov. 3, 2014) (holding employee “cannot recover waiting time  
penalties” when the underlying wage “claims are preempted by federal law” because when the  
“underlying causes of action fail, the derivative . . . claim also fails”).

1 wage claim was pre-empted because the court “must look to the CBA, which properly governs the  
2 amount, method, and timing of payment” of wages); *Clee v. MVM, Inc.*, 91 F. Supp. 3d 54, 62–64  
3 (D. Mass. 2015) (holding employees’ statutory wage claims for uncompensated work were pre-  
4 empted by federal labor law because they depended on the interpretation of the collective bargaining  
5 agreement as to what constituted compensable work and whether the agreement conflicted with state  
6 wage law).

7 **D. Plaintiffs Lack Standing to Represent Union Employees, Who Are Exclusively**  
8 **Represented by their Respective Unions.**

9 Plaintiffs do not dispute that, pursuant to 29 U.S.C. § 159(a), that the union is the “exclusive  
10 representatives of all the employees in such unit for the purposes of collective bargaining in respect  
11 to rates of pay, wages, hours of employment, or other conditions of employment.” Despite that clear  
12 direction, Plaintiffs wrongly insist that they, as individuals, may represent union employees. *See*  
13 *Resp.* at 13:8- 15:4. To do so, Plaintiffs attempt to misconstrue the statement, in *Lucas v. Bechtel*  
14 *Corp.* (“*Lucas I*”), 633 F.2d 757, 759 (9th Cir. 1980), that “individuals have sued to vindicate their  
15 ‘uniquely personal rights’ to the wages claimed under the allegedly breached agreements,” because  
16 in *Lucas I*, the Ninth Circuit never identifies what these “uniquely personal rights” are. In *Lucas v.*  
17 *Bechtel Corp.*, (“*Lucas II*”) 800 F.2d 839, 847-48 (9th Cir. 1986), the Ninth Circuit clarified that the  
18 individual personal right to wages was a claim of “breach of contract” against both the employer  
19 and “the union defendants.” This is simply a recognition of *Vaca v. Sipes*, 386 U.S. 171, 186,  
20 (1967), where the United States Supreme Court held that individual workers may step into the  
21 union's shoes and represent themselves or other employees only when the union, as the exclusive  
22 representative, has “breached its duty of fair representation in its handling of the employee's  
23 grievance.” *See also Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562- 7 (1976) (cited in  
24 *Lucas I* and explaining that before an employee represented by a union may “vindicate uniquely  
25 personal rights of employees such as wages, hours, overtime pay” the employee must establish that  
26 the Union “breached its duty of fair representation” as set forth in *Vaca*). Nowhere do Plaintiffs  
27 similarly allege that any union breached its duties under the Culinary CBA.  
28

1 Because Plaintiffs have not alleged a breach of the duty of fair representation by the unions,  
2 they concede that, by seeking to represent union employees in this action, they are attempting to  
3 usurp the respective unions' roles as the exclusive representatives for their bargaining units by  
4 attempting to pursue a class action on behalf of those employees. *See Baker v. IBP, Inc.*, 357 F.3d  
5 685, 686, 690 (7th Cir. 2004) (holding that where a "suit is at its core about the adequacy of the  
6 wages [the employer] pays," individual employees may not represent union workers in a class action  
7 when the Union has not breached its duty of fair representation because union workers "have a  
8 representative—one that under the NLRA is supposed to be 'exclusive' with respect to wages" and  
9 therefore "Plaintiffs' request to proceed on behalf of a class of all workers shows that they seek to  
10 usurp the union's role") Accordingly, Plaintiffs lack standing to represent such union employees and  
11 that their class action claims seeking to do so should be dismissed.

12 **E. Plaintiffs Are Not Entitled to Additional Discovery Under NRCP 56(d).**

13 Plaintiffs request that, if the Court is inclined to hold that the Culinary CBA is valid, they be  
14 given "an opportunity to conduct discovery on whether the Culinary Union and the CBA are  
15 operational." *See Resp. at 17:18-21.* This request does not meet the requirements of NRCP 56(d).  
16 Rule 56(d) mandates that additional discovery may only be granted when the "nonmovant shows by  
17 affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its  
18 opposition. . . ." In *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011),  
19 the Nevada Supreme Court held that the district court properly denied a request for additional  
20 discovery when the nonmovant "did not provide an affidavit in support of his request," but instead  
21 merely requested additional discovery in a paragraph when opposing summary judgment. Here,  
22 Plaintiffs merely request additional discovery in a footnote without any supporting affidavit.  
23 Notably absent is an affidavit from Plaintiff Williams providing her justification to support any  
24 belief that discovery would actually demonstrate that the Culinary Union and the Culinary CBA  
25 were non-operational. No affidavit was provide because Plaintiff Williams has no such belief. *See*  
26 *also Bakerink v. Orthopaedic Assocs., Ltd.*, 94 Nev. 428, 431, 581 P.2d 9, 11 (1978) (holding that  
27 "Rule 56(f) [now 56(d)] is not a shield that can be raised to block a motion for summary judgment"  
28



1 when the nonmovant fails to “how postponement of a ruling on the motion will enable him, by  
2 discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact”).

3 Plaintiffs’ request is simply ridiculous in light of the evidence presented with the Motion,  
4 which Plaintiffs have wholly failed to address. The evidence establishes that Culinary CBA was  
5 ratified November 17, 2011, that the Culinary brought grievances and sought arbitration pursuant to  
6 the Culinary CBA, that Culinary Union officials testified to the validity of the Culinary CBA, and  
7 that the Culinary Union stated in an arbitration brief in October 2016 that the Culinary CBA was in  
8 effect at that time. Further, though it is irrelevant, Plaintiffs offer no reason to suspect that the  
9 Culinary Union, which has represented hospitality workers in the state of Nevada for the past eight-  
10 five (85) years, did not represent Plaintiff Williams during her tenure of employment. *See*  
11 <https://www.culinaryunion226.org/union/history>. As a matter of public record, the Culinary Union  
12 extensively detailed its representational activities for 2014 and 2015, when Plaintiff Williams was  
13 employed by GSR. *See* <https://www.culinaryunion226.org/union/finances>; 2014 Form LM-2 Labor  
14 Organization Annual Report; 2015 Form LM-2 Labor Organization Annual Report.

15 Further, the Culinary Union continues to this day to actively represent GSR employees. Ex.  
16 3, Supp. Hilden Dec., ¶2. The Culinary Union sent a letter dated September 21, 2016 to Larry  
17 Montrose, Director of Human Resources, stating:

18 Pursuant to the Collective Bargaining Agreement between Grand Sierra Resorts and  
19 the Culinary Workers Union Local 226 (the “union”), the Union hereby gives notices  
20 of its intent to change and modify the terms and conditions of the collective  
bargaining agreement which expires on November 1, 2016.

21 Please communicate in writing to J.T. Thomas at the Union for purposes of arranging  
collective bargaining negotiations.

22 *Id.*, ¶3, and Ex. A thereto. Montrose gave this letter to attorney Hilden, who contacted Mr. Thomas  
23 to arrange dates to begin negotiations, and participated in the parties’ negotiation of an Interim  
24 Agreement dated December 14, 2016, stating that they were negotiating the terms of a successor  
25 collective bargaining agreement. *Id.*, ¶¶ 4-5 and Ex. B thereto. The Interim Agreement was signed  
26 by JT Thomas on behalf of the Culinary Union, and by GSR’s President. In the Interim Agreement,  
27 the parties agreed to implement wage increases and bonuses for the Guest Room Attendants, the  
28

1 position held by Plaintiff Williams. *Id.* ¶5. The parties engaged in negotiations throughout 2017 and  
2 into 2018, and on March 10, 2018, a subsequent Culinary CBA was ratified. Ex. 3, Supp. Hilden  
3 Dec., ¶¶6-7, and Ex. C thereto. It runs through October 31, 2023. *Id.*

4 Accordingly, Plaintiffs' request for additional discovery should be denied, and this Court  
5 should grant GSR's motion for summary judgment in its entirety.

### 6 **III. CONCLUSION**

7 Pursuant to the foregoing, this Court should grant GSR's motion for summary judgment and  
8 dismiss Plaintiffs' First Amended Class Action Complaint with prejudice.

### 9 **AFFIRMATION**

10 The undersigned does hereby affirm that the preceding document and the exhibits attached  
11 hereto do not contain the personal information of any person.

12  
13 Dated this 15th day of July 2020

14  
15 By: /s/ Susan Heaney Hilden  
16 Susan Heaney Hilden Esq., Nevada Bar No. 5358  
17 Attorney for Defendants  
18  
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1 **PROOF OF SERVICE**

2 CASE NAME: Martel et. al vs. HG Staffing, LLC. at el.  
3 Court: District Court of the State of Nevada  
4 Case No.: CV16-01264

5 On the date last written below, following document(s) was served as follows:  
6 **REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

7 \_\_\_\_\_ by placing an original or true copy thereof in a sealed envelope, with sufficient  
8 postage affixed thereto, in the United States Mail, Las Vegas, Nevada and  
9   X   by using the Court's CM/ECF Electronic Notification System addressed to:  
10 \_\_\_\_\_ by electronic email addressed to :  
11 \_\_\_\_\_ by personal or hand/delivery addressed to:  
12 \_\_\_\_\_ By facsimile (fax) addresses to:  
13 \_\_\_\_\_ by Federal Express/UPS or other overnight delivery addressed to:

12 Mark R. Thierman, Esq.  
13 Leah L. Jones, Esq.  
14 THIERMAN| BUCK LAW FIRM  
15 7287 Lakeside Drive  
16 Reno, Nevada 89511  
17 *Attorney for Plaintiffs*

18 DATED the 15th day of July 2020.

19 /s/ Susan Heaney Hilden  
20 \_\_\_\_\_  
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**EXHIBIT INDEX**

| <b>Exhibit</b> | <b>Description</b>                              | <b>Pages</b> |
|----------------|---|--------------|
| 1              | Declaration of Cynthia Williams                 | 2            |
| 2              | Supplemental Declaration of Eric Candela        | 5            |
| 3              | Supplemental Declaration of Susan Heaney Hilden | 86           |

## **Exhibit 1**

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## Exhibit 2

1 **SUPPLEMENTAL DECLARATION OF ERIC CANDELA**

2 I, Eric Candela, do hereby declare and state as follows:

3 1. I am an IT Database Manager for Defendant MEI-GSR Holdings, LLC, d/b/a Grand  
4 Sierra Resort ("GSR"). I have personal knowledge of the matters stated herein and can testify  
5 thereto.

6 2. Beginning in August 18, 2010, when employees at GSR obtained a bank from the  
7 cage they were required to swipe their badge, which indicated the time they obtained their bank.  
8 Similarly, when employees returned their bank to the cage, they swipe their badge, indicating they  
9 time they returned their bank.

10 3. GSR began using the KRONOS timekeeping system on November 4, 2011, which  
11 tracked the time that employees clocked in and out.

12 3. I reviewed the KRONOS time records for Plaintiff Eddy Martel ("Martel") along with  
13 cage dispatch records showing when Martel obtained his cage from the bank and returned his cage to  
14 the bank.

15 4. The spreadsheet attached as Exhibit A is for the time period of May 31, 2014 through  
16 Martel's last day of employment on June 13, 2014. It shows the timeclock punches for Martel, along  
17 with the times from the cage dispatch records showing when he obtained his bank from the cage and  
18 returned his bank to the cage. The notation "Cage Dispatch In" reflects when he obtained his bank at  
19 the start of a shift, and the notation "Cage Dispatch Out" reflects when he returned his bank at the  
20 end of a shift.

21 5. As reflected in Exhibit A, Martel obtained his bank after clocking in and returned his  
22 bank before clocking out.

23 I declare under penalty of that the foregoing Declaration is true and correct.

24 Executed on July 5, 2019.

25  
26 /s/ Eric Candela  
ERIC CANDELA



---

# **Exhibit A**

|                        |           |                         |                   |            |
|------------------------|-----------|-------------------------|-------------------|------------|
| MARTEL-RODRIGUEZ, EDDY | 5/31/2014 | 2014-05-31 09:59:00.000 | Kronos In Actual  | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 5/31/2014 | 2014-05-31 10:00:00.000 | Cage Dispatch In  |            |
| MARTEL-RODRIGUEZ, EDDY | 5/31/2014 | 2014-05-31 17:31:00.000 | Cage Dispatch Out |            |
| MARTEL-RODRIGUEZ, EDDY | 5/31/2014 | 2014-05-31 17:34:00.000 | Kronos Out Actual | ShiftEnd   |
| MARTEL-RODRIGUEZ, EDDY | 6/1/2014  | 2014-06-01 09:55:00.000 | Kronos In Actual  | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 6/1/2014  | 2014-06-01 09:56:00.000 | Cage Dispatch In  |            |
| MARTEL-RODRIGUEZ, EDDY | 6/1/2014  | 2014-06-01 18:22:00.000 | Cage Dispatch Out |            |
| MARTEL-RODRIGUEZ, EDDY | 6/1/2014  | 2014-06-01 18:23:00.000 | Kronos Out Actual | ShiftEnd   |
| MARTEL-RODRIGUEZ, EDDY | 6/3/2014  | 2014-06-03 18:00:00.000 | Kronos In Actual  | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 6/3/2014  | 2014-06-03 18:01:00.000 | Cage Dispatch In  |            |
| MARTEL-RODRIGUEZ, EDDY | 6/3/2014  | 2014-06-03 23:41:00.000 | Cage Dispatch Out |            |
| MARTEL-RODRIGUEZ, EDDY | 6/3/2014  | 2014-06-03 23:42:00.000 | Kronos Out Actual | ShiftEnd   |
| MARTEL-RODRIGUEZ, EDDY | 6/4/2014  | 2014-06-04 17:59:00.000 | Kronos In Actual  | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 6/4/2014  | 2014-06-04 18:01:00.000 | Cage Dispatch In  |            |
| MARTEL-RODRIGUEZ, EDDY | 6/4/2014  | 2014-06-05 00:10:00.000 | Cage Dispatch Out |            |
| MARTEL-RODRIGUEZ, EDDY | 6/4/2014  | 2014-06-05 00:11:00.000 | Kronos Out Actual | ShiftEnd   |
| MARTEL-RODRIGUEZ, EDDY | 6/5/2014  | 2014-06-05 18:00:00.000 | Kronos In Actual  | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 6/5/2014  | 2014-06-05 18:01:00.000 | Cage Dispatch In  |            |
| MARTEL-RODRIGUEZ, EDDY | 6/5/2014  | 2014-06-06 00:20:00.000 | Cage Dispatch Out |            |
| MARTEL-RODRIGUEZ, EDDY | 6/5/2014  | 2014-06-06 00:22:00.000 | Kronos Out Actual | ShiftEnd   |
| MARTEL-RODRIGUEZ, EDDY | 6/7/2014  | 2014-06-07 09:56:00.000 | Kronos In Actual  | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 6/7/2014  | 2014-06-07 09:58:00.000 | Cage Dispatch In  |            |
| MARTEL-RODRIGUEZ, EDDY | 6/7/2014  | 2014-06-07 16:46:00.000 | Cage Dispatch Out |            |
| MARTEL-RODRIGUEZ, EDDY | 6/7/2014  | 2014-06-07 16:48:00.000 | Kronos Out Actual | ShiftEnd   |
| MARTEL-RODRIGUEZ, EDDY | 6/8/2014  | 2014-06-08 10:04:00.000 | Kronos In Actual  | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 6/8/2014  | 2014-06-08 10:06:00.000 | Cage Dispatch In  |            |
| MARTEL-RODRIGUEZ, EDDY | 6/8/2014  | 2014-06-08 17:45:00.000 | Cage Dispatch Out |            |
| MARTEL-RODRIGUEZ, EDDY | 6/8/2014  | 2014-06-08 17:46:00.000 | Kronos Out Actual | ShiftEnd   |
| MARTEL-RODRIGUEZ, EDDY | 6/10/2014 | 2014-06-10 18:06:00.000 | Kronos In Actual  | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 6/10/2014 | 2014-06-10 18:07:00.000 | Cage Dispatch In  |            |
| MARTEL-RODRIGUEZ, EDDY | 6/10/2014 | 2014-06-11 00:31:00.000 | Cage Dispatch Out |            |
| MARTEL-RODRIGUEZ, EDDY | 6/10/2014 | 2014-06-11 00:34:00.000 | Kronos Out Actual | ShiftEnd   |
| MARTEL-RODRIGUEZ, EDDY | 6/11/2014 | 2014-06-11 18:01:00.000 | Kronos In Actual  | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 6/11/2014 | 2014-06-11 18:02:00.000 | Cage Dispatch In  |            |

|                        |           |                         |                   |            |
|------------------------|-----------|-------------------------|-------------------|------------|
| MARTEL-RODRIGUEZ, EDDY | 6/11/2014 | 2014-06-12 00:34:00.000 | Cage Dispatch Out | ShiftEnd   |
| MARTEL-RODRIGUEZ, EDDY | 6/11/2014 | 2014-06-12 00:36:00.000 | Kronos Out Actual | ShiftStart |
| MARTEL-RODRIGUEZ, EDDY | 6/12/2014 | 2014-06-12 18:10:00.000 | Kronos In Actual  |            |
| MARTEL-RODRIGUEZ, EDDY | 6/12/2014 | 2014-06-12 18:12:00.000 | Cage Dispatch In  |            |
| MARTEL-RODRIGUEZ, EDDY | 6/12/2014 | 2014-06-13 00:21:00.000 | Cage Dispatch Out |            |
| MARTEL-RODRIGUEZ, EDDY | 6/12/2014 | 2014-06-13 00:26:00.000 | Kronos Out Actual | ShiftEnd   |

## **Exhibit 3**

**SUPPLEMENTAL DECLARATION OF SUSAN HEANEY HILDEN**

I, Susan Heaney Hilden, do hereby declare and state as follows:

1. I am Associate General Counsel for the Meruelo Group, LLC. I have held this position since April of 2015. In my position, I provide legal services to MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT ("GSR"). I have personal knowledge of the matters stated herein and can testify thereto.

2. The Culinary Union continues to this day to represent GSR employees.

3. The Culinary Union sent a letter dated September 21, 2016 to Larry Montrose, Director of Human Resources, stating:

Pursuant to the Collective Bargaining Agreement between Grand Sierra Resorts and the Culinary Workers Union Local 226 (the "union"), the Union hereby gives notices of its intent to change and modify the terms and conditions of the collective bargaining agreement which expires on November 1, 2016.

Please communicate in writing to J.T. Thomas at the Union for purposes of arranging collective bargaining negotiations.

A true and correct copy of this letter is attached as Exhibit A hereto.

4. Larry Montrose gave this letter to me, and I contacted Mr. Thomas to arrange dates to begin negotiations. I had previously met Mr. Thomas at the arbitration in August 2016, when he testified that he had represented the Culinary Union in negotiation the Culinary CBA that was ratified on November 17, 2011, as described in the my declaration submitted with the Motion.

5. I participated in the parties' negotiation of an Interim Agreement dated December 14, 2016, stating that the parties were negotiating the terms of a successor collective bargaining agreement. A true and correct copy of the Interim Agreement is attached hereto as Exhibit B. The Interim Agreement was signed by JT Thomas on behalf of the Culinary Union, and by the GSR's President. In the Interim Agreement, the parties agreed to implement wage increases and bonuses for Guest Room Attendants ("GRAs") -- the position held by Plaintiff Janet Jackson Williams.

6. The parties engaged in negotiations throughout 2017 and into 2018. I attended a number of negotiating sessions, during which I witnessed various GSR employees serving as members of the

negotiating committee, sitting across the table from the Company along with Mr. Thomas and the Culinary Union's counsel.

7. On March 10, 2018, a subsequent Culinary CBA was ratified. A true and correct copy is attached hereto as Exhibit C. The successor CBA runs through October 31, 2023.

8. I took Plaintiff Martel's deposition on May 17, 2017. At no time during his deposition did Martel ever mention attending pre-shift meetings – including when asked to describe the process he went through prior to clocking in. A true and correct copy of relevant pages of the deposition transcript are attached hereto as Exhibit D. pp. 10:7-27:6.

I declare under penalty of that the foregoing Declaration is true and correct.

Executed on July 15, 2020.

/s/ Susan Heaney Hilden  
SUSAN HEANEY HILDEN

---

# Exhibit A



Affiliated with UNITE HERE INTERNATIONAL UNION

September 21, 2016

Via email [larry.montrose@grandsierraresorts.com](mailto:larry.montrose@grandsierraresorts.com)  
fax (775) 789-2384  
And mail

Mr. Larry Montrose  
Director of Human Resources  
Grand Sierra Resorts  
2500 E. Second St.  
Reno, NV 89595-0002

Dear Mr. Montrose:

Pursuant to the Collective Bargaining Agreement between Grand Sierra Resorts and the Culinary Workers Union Local 226 (the "Union"), the Union hereby gives notice of its intent to change and modify the terms and conditions of the collective bargaining agreement which expires on November 1, 2016.

Please communicate in writing to J. T. Thomas at the Union for purposes of arranging collective bargaining negotiations.

Sincerely,

*Geoconda Argüello Kline*

Geoconda Argüello-Kline  
Secretary-Treasurer

*Ted Pappageorge*  
Ted Pappageorge

President/ddt

cc: James Bonaventure, Admin. Director, Legal Department

SEP 23 2016



FMCS FORM F-7

# FEDERAL MEDIATION & CONCILIATION SERVICE

## NOTICE TO MEDIATION AGENCIES

Form Approved  
OMB NO. 3076-0004  
Expires 10-31-2015

Date Submitted:

Confirmation Number:

**Notice Filing Instructions**  
Please submit this notice once to FMCS:

Electronically

Fax

U.S. Mail

[www.fmcs.gov](http://www.fmcs.gov)

-OR-

(202) 606-4253

-OR-

NOTICE PROCESSING UNIT  
FEDERAL MEDIATION & CONCILIATION SERVICE  
2100 K STREET, NW  
WASHINGTON, DC 20427

You may also be required to notify your state or territorial mediation agency. Visit [www.fmcs.gov](http://www.fmcs.gov) for a link to state and territorial mediation agencies.

**You are hereby notified that written notice of proposed termination or modification of the existing collective bargaining contract was served upon the other party to this contract and that no agreement has been reached.**

1. NOTICE TYPE (Select one) ☒ Renegotiation ☐ Reopener ☐ Initial Contract

a. Contract expiration date. (For existing contracts only.)

(MM-DD-YYYY) 11/01/2016

b. Contract reopen date. (Only if existing contract provides for reopening or for voluntary re-openers.)

(MM-DD-YYYY)

2. INDUSTRY

(See Instructions page for industry options)

Check this box if this employer is a hospital, nursing home or other health care institution. ☐

3. THIS NOTICE IS FILED ON BEHALF OF THE:

(Select one) ☒ Union☐ Employer

|                          |   |                |                                       |
|--------------------------|---|----------------|---------------------------------------|
| 4. EMPLOYER NAME         | Worklife Financial, Inc. dba Grand Sierra Resort and Casino |                |                                       |
| 5. ADDRESS LINE 1        | 2500 E. Second Street                                       | ADDRESS LINE 2 |                                       |
| CITY                     | Reno  | STATE          | NV ZIP CODE 89595-0002                |
| 6. EMPLOYER REP.         | Larry Montrose  | REP. TITLE     | Director, Human Resources             |
| 7. PHONE (772) 789-2077  | FAX (775) 789-2384  | EMAIL          | larry.montrose@grandsierraresorts.com |
| 8. UNION NAME            | Culinary Workers Union                                      | LOCAL #        | 226                                   |
| 9. ADDRESS LINE 1        | 1630 S. Commerce Street                                     | ADDRESS LINE 2 |                                       |
| CITY                     | Las Vegas   | STATE          | NV ZIP CODE 89102                     |
| 10. UNION REP.           | Geoconda Arguello-Kline                                     | REP. TITLE     | Secretary-Treasurer                   |
| 11. PHONE (702) 386-5123 | FAX (702) 386-9517  | EMAIL          | gkline@culinaryunion226.org           |

12. LOCATION OF AFFECTED ESTABLISHMENT CITY Las Vegas STATE VA ZIP CODE 89118

13. LOCATION OF NEGOTIATIONS (If different from Line 12) CITY STATE ZIP CODE

14. NUMBER OF BARGAINING UNIT MEMBERS

1,327

(At all employer locations covered by this contract.)

15. TOTAL EMPLOYEES AT AFFECTED LOCATION(S)

(All employees, including bargaining unit members, where this contract applies.)

16. NAME AND TITLE OF OFFICIAL FILING THIS NOTICE

Geoconda Arguello-Kline, Secretary-Treasurer

17. SIGNATURE AND DATE

*Geoconda Arguello-Kline* 9/21/16

**PAPERWORK REDUCTION ACT NOTICE:** The estimated burden associated with this collection of information is 10 minutes per respondent. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427 or the Paperwork Reduction Project 3076-0003, Office of Management and Budget, Washington, DC 20503.

---

# **Exhibit B**

Grand Sierra Resort and Casino and Local Joint Executive Board  
Interim Agreement  
December 14, 2016

Grand Sierra Resort ("Employer") and Local Joint Executive Board of Las Vegas ("Union") are currently negotiating the terms of a successor collective bargaining agreement which shall have as its effective date November 1, 2016. The parties' current collective bargaining agreement expired October 31, 2016.

The parties have agreed to the following Interim agreement, the terms of which shall go into effect on the dates identified below. The parties agree that the wage increases in this interim agreement shall be the only wage increases in 2017, unless the parties subsequently agree otherwise in writing. There will be no modification to these interim changes without full and complete discussion and negotiation by these contracting parties:

**Section 16.15: Guest Room Attendants (GRA)**

1. Wage Increases: GRAs shall have their hourly pay increased to the following amounts effective for hours worked beginning on and after December 23, 2016:
  - 0 to under 2 years: \$11
  - 2 years to under 15 years: \$11.25
  - 15 years and over: \$11.50
2. Bonuses: GRAs shall receive a second one-time bonus of \$200 dollars in early January 2017 (the January bonus supplements an earlier bonus of \$200 dollars which was already paid in or about December 2016).
3. Room Credits: As of December 16, 2016 Grand Sierra will no longer follow the "credit system". Instead, GRAs will be required to meet a daily quota of 15 rooms. Suites shall be worth more than a single room and such worth shall be calculated using the current credit conversion chart which is in Exhibit 4.
4. Side Letter No. 2- Incentive Plan for "Buying" Rooms shall remain in place without change.
5. Meal/Break Periods: Employees have the option to elect to combine breaks and meal periods into a single 50-minute meal period. The Employer will provide travel time not to exceed five (5) minutes to and from employee's place of work.

**Wage Increase**

1. With the exception of Guest Room Attendants, all bargaining unit members shall receive an hourly wage increase of \$0.20 for hours worked on and after February 1, 2017.

For the Company *Jacy Munno* Date 1/13/17

For the Union *[Signature]* Date 1-16-17

---

# Exhibit C

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF NEVADA

3 -oOo-

4  
5 THOMAS READER, JOANNE ALEXANDER, :Case No.  
6 MICHAEL ALMARAZ, CAITLIN ATCHLEY, :3:16-cv-00392-LRH-VPC  
7 RICHARD AURIERO, SANDRA AURELI, :  
8 JOHN BAHURKA, WENDY BASSALLO, :  
9 SHARON BENUM, JUSTINE BRADLEY, :  
10 ALEXIS BRYANT, DENA BUCHANAN, :  
11 MICHAEL BUTLER, MICHAEL CAIN, :  
12 KATRINA CALLAN, MARY ANNE CAPILLA, :  
13 TIFFANY CARRERA, TIFFANY CARTER, :  
14 RICHARD CATLIN, III, DEAN :  
15 COMOLETTI, JAMES CUSICK, KIMBERLY :  
16 DIXON, MARQUEZ DONALDSON, :  
17 KATHERINE DOWLING, NATHAN ERHART, :  
18 GAVINO EVANGELISTA, SHELLEY FAUST, :  
19 CLEVELAND GRIFFIN, CAITLIN GUNN, :  
20 LESLIE HALL, KATHLEEN HALLMARK, :  
21 BOO HAN, RUSSELL HARRINGTON, :  
22 MANUEL HARRIS, ROBERT HASTINGS, :  
23 PATRICK HEEERAN, LIZ HEERAN, :  
24 NATALYA HELD, BRIDGETTE HINES, :  
25 IMOGEN HOLT, SARAH JONES, NIGEL :  
JONES THERESA KELLY-MONTGOMERY, :  
STEPHANIE KNAUSS, JUSTINE LANG, :  
YULIA LARSON, JUSTIN LEE, SCOTT :  
LINDSAY, CHRIS LITTLEFIELD, SANDRA :  
MARTINEZ, DANNY MCGOWAN, MICHAEL :  
McKEE, MARIA MCKENZIE, CALLIE :  
MIANO, RAY MORAIN, KEITH MORRISON, :  
GINA NELSON, JENNIFER NICHOLS, :  
KAROLINA OLECH, NATALIE ORDAS, :  
ARLENE OSORMAN, KATHRYN OWEN, :  
KEITH PARKINS, JARROD PEREZ, :  
MARCELLA PLASCENCIA, ERIC PONSOCK, :  
RICHARD POST, ROXANNE PRIMUS, :  
HEATHER RAMIREZ, SCOTT REYNOLDS, :  
CRYSTELLE RIFE, JAY RITT, GAY :  
ROBERTS, BEVERLY RODRIGUEZ, :  
MELISSA ROSINA, MARTHA ROYBAL, :  
JODY RUSSELL, AMES SABELLANO-CLARK :  
VICKI SEYLER, MISTY SHELBY, :  
JENNIFER SHIELDS, CRAIG SIMON, :

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| <p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF NEVADA</p> <p>3 -oOo-</p> <p>4</p> <p>5 THOMAS READER, JOANNE ALEXANDER, :Case No.</p> <p>6 MICHAEL ALMARAZ, CAITLIN ATCHLEY, :3:16-cv-00392-LRH-VPC</p> <p>7 RICHARD AURIERO, SANDRA AURELI, :</p> <p>8 JOHN BAHURKA, WENDY BASSALLO, :</p> <p>9 SHARON BENUM, JUSTINE BRADLEY, :</p> <p>10 ALEXIS BRYANT, DENA BUCHANAN, :</p> <p>11 MICHAEL BUTLER, MICHAEL CAIN, :</p> <p>12 KATRINA CALLAN, MARY ANNE CAPILLA, :</p> <p>13 TIFFANY CARRERA, TIFFANY CARTER, :</p> <p>14 RICHARD CATLIN, III, DEAN</p> <p>15 COMOLETTI, JAMES CUSICK, KIMBERLY :</p> <p>16 DIXON, MARQUEZ DONALDSON,</p> <p>17 KATHERINE DOWLING, NATHAN ERHART, :</p> <p>18 GAVINO EVANGELISTA, SHELLEY FAUST, :</p> <p>19 CLEVELAND GRIFFIN, CAITLIN GUNN, :</p> <p>20 LESLIE HALL, KATHLEEN HALLMARK, :</p> <p>21 BOO HAN, RUSSELL HARRINGTON, :</p> <p>22 MANUEL HARRIS, ROBERT HASTINGS, :</p> <p>23 PATRICK HEEBERAN, LIZ HEEBERAN,</p> <p>24 NATALYA HELD, BRIDGETTE HINES, :</p> <p>25 IMOGEN HOLT, SARAH JONES, NIGEL :</p> <p>JONES THERESA KELLY-MONTGOMERY, :</p> <p>STEPHANIE KNAUSS, JUSTINE LANG, :</p> <p>YULIA LARSON, JUSTIN LEE, SCOTT :</p> <p>LINDSAY, CHRIS LITTLEFIELD, SANDRA :</p> <p>MARTINEZ, DANNY MCGOWAN, MICHAEL :</p> <p>McKEE, MARIA MCKENZIE, CALLIE :</p> <p>MIANO, RAY MORAIN, KEITH MORRISON, :</p> <p>GINA NELSON, JENNIFER NICHOLS, :</p> <p>KAROLINA OLECH, NATALIE ORDAS, :</p> <p>ARLENE OSORMAN, KATHRYN OWEN, :</p> <p>KEITH PARKINS, JARROD PEREZ,</p> <p>MARCELLA PLASCENCIA, ERIC PONSOCK, :</p> <p>RICHARD POST, ROXANNE PRIMUS, :</p> <p>HEATHER RAMIREZ, SCOTT REYNOLDS, :</p> <p>CRYSTELLE RIFE, JAY RITT, GAY :</p> <p>ROBERTS, BEVERLY RODRIGUEZ, :</p> <p>MELISSA ROSINA, MARTHA ROYBAL,</p> <p>JODY RUSSELL, AMES SABELLANO-CLARK,</p> <p>VICKI SEYLER, MISTY SHELBY, :</p> <p>JENNIFER SHIELDS, CRAIG SIMON, :</p> | <p>1 APPEARANCES:</p> <p>2</p> <p>3 For the Plaintiffs:</p> <p>4 THIERNAN, BUCK LLP</p> <p>5 Attorneys at Law</p> <p>6 By: LEAH L. JONES, ESQ.</p> <p>7 7287 Lakeside Drive,</p> <p>8 Reno, Nevada 89511</p> <p>9</p> <p>10 For the Defendant:</p> <p>11 MERUELO GROUP LLC</p> <p>12 Associate Counsel</p> <p>13 By: SUSAN HEANEY HILDEN, ESQ.</p> <p>14 2500 East 2nd Street</p> <p>15 Reno, Nevada 89595</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
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| <p>1 SHAWN SKELTON, BRANDI SMITH, :</p> <p>2 GABRIEL SMITH, KRYSTA STEIGLER, :</p> <p>3 JEFFREY STEPRO, ROGER STEVENS, :</p> <p>4 MARC STRASSNER, JOSIE SUSTIGUER, :</p> <p>5 MARK THOMAS, DELLENA THOMPSON, :</p> <p>6 SUSAN TIMM, JACKI TRUESDELL,</p> <p>7 CELENE VASQUEZ, WHITNEY VAUGHN, :</p> <p>8 RACHEL WERNER, DANA WOLFF, :</p> <p>9 MEI-SHING WRATSKO, and DEAN :</p> <p>10 ZATTERSTROM on behalf of</p> <p>11 themselves and all others :</p> <p>12 similarly situated, :</p> <p>13</p> <p>14 Plaintiffs, :</p> <p>15</p> <p>16 vs. :</p> <p>17</p> <p>18 HG STAFFING, LLC, MEI-GSR HOLDINGS:</p> <p>19 LLC d/b/a GRAND SIERRA RESORT, and:</p> <p>20 DOES 1 through 50, inclusive, :</p> <p>21</p> <p>22 Defendants, :</p> <p>23</p> <p>24</p> <p>25</p> <p>DEPOSITION OF EDDY MARTEL-RODRIGUEZ</p> <p>Wednesday, May 17, 2017</p> <p>Reno, Nevada</p> <p>REPORTED BY: SUSAN E. BELINGHERI, CCR #655</p>   | <p>1 INDEX</p> <p>2</p> <p>3 EXAMINATION: PAGE</p> <p>4 By Ms. Hilden..... 5</p> <p>5 By Ms. Jones..... 53</p> <p>6</p> <p>7</p> <p>8 EXHIBITS: DESCRIPTION: PAGE</p> <p>9 Exhibit 1 Declaration..... 43</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |

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| <p>1 lawsuit was about?</p> <p>2 A. It was regarding overtime and compensation for</p> <p>3 workers that were coming into the building at a certain</p> <p>4 time, checking in through security, having to clock in</p> <p>5 after they were getting their tills, and having to go</p> <p>6 ahead and go into their job department and then clock</p> <p>7 back in.</p> <p>8 Q. And you said having to clock in before -- after</p> <p>9 getting their towels?</p> <p>10 A. After getting their -- well, after getting their</p> <p>11 banks. Getting their money for their tills.</p> <p>12 Q. Their tills?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Got it. I thought you were saying</p> <p>15 "towels," so I was --</p> <p>16 A. No.</p> <p>17 Q. -- kind of confused.</p> <p>18 A. It's okay.</p> <p>19 Q. Okay. Why did you become a plaintiff in the</p> <p>20 lawsuit?</p> <p>21 A. The reason why I became a plaintiff for this</p> <p>22 lawsuit is because I feel that there's some compensation</p> <p>23 for hours that I worked overtime with the company that</p> <p>24 were not paid for, for the fact that I come in 10 to</p> <p>25 15 minutes at -- during the, during a couple of my</p>                                   | <p>1 GSR?</p> <p>2 A. I worked from the time period of January 2012</p> <p>3 through July 2014.</p> <p>4 Q. January 2012 through July 2014. Did you hold the</p> <p>5 same position during that entire time period?</p> <p>6 A. Yes.</p> <p>7 Q. What was your position?</p> <p>8 A. Front desk. Front desk.</p> <p>9 Q. Front desk?</p> <p>10 A. Yes.</p> <p>11 Q. The front desk at GSR?</p> <p>12 A. Yes. Well, no. Front desk for the bowling</p> <p>13 alley.</p> <p>14 Q. Okay.</p> <p>15 A. Front desk attendant.</p> <p>16 Q. Front desk attendant for the bowling alley?</p> <p>17 A. Yes.</p> <p>18 Q. So did you only work in the bowling alley when</p> <p>19 you worked at GSR?</p> <p>20 A. When I worked at the GSR, I also worked for the</p> <p>21 Sierra Bunker.</p> <p>22 Q. What is the Sierra Bunker?</p> <p>23 A. It is the golf range. However, they are not</p> <p>24 associated with the Grand Sierra.</p> <p>25 Q. Where is the Sierra Bunker located?</p>                            |
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| <p>1 shifts and have to check in through security, go up to</p> <p>2 the cage, get the money, go back, and then clock back</p> <p>3 in. So there's about 10, 15 minutes per day that I</p> <p>4 believe I should be compensated.</p> <p>5 Q. For when you were getting your bank?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. And not clocked in.</p> <p>9 Q. Okay. And are you saying that you got a bank</p> <p>10 every day that you worked?</p> <p>11 A. When I first started, it wasn't initial. It was</p> <p>12 until I went through a couple of my months with the</p> <p>13 Grand Sierra that I started having to go ahead and</p> <p>14 collect a bank and then go up to the bowling alley.</p> <p>15 Q. Okay. So there was a time period that you worked</p> <p>16 for GSR where you did not have a bank; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And even after you had -- there was a time period</p> <p>19 when you started getting a bank, you didn't use a bank</p> <p>20 every day; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Okay. So it wasn't every shift that you</p> <p>23 worked where this was an issue; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. During what time period did you work for</p> | <p>1 A. It's just on the south end of the casino.</p> <p>2 Q. Is that the driving range out over --</p> <p>3 A. Yes. It's the driving range --</p> <p>4 Q. -- the pond?</p> <p>5 A. Yes, the pond.</p> <p>6 Q. Okay. And GSR was not your employer for that?</p> <p>7 A. No, they were not.</p> <p>8 Q. They weren't?</p> <p>9 A. They were not.</p> <p>10 Q. Could you speak up just a little bit?</p> <p>11 A. They weren't.</p> <p>12 Q. Okay. Thank you.</p> <p>13 Okay. So when you were working for GSR, you were</p> <p>14 always working in the bowling alley.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And that was from -- let me just make sure</p> <p>17 I have the dates -- January 2012 through July 2014.</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Okay. Okay. And you held the same job title</p> <p>20 that entire time?</p> <p>21 A. Yes.</p> <p>22 Q. Who did you report to?</p> <p>23 A. Point of clarification.</p> <p>24 Q. Uh-huh.</p> <p>25 A. Can you go ahead and clarify your question?</p> |

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| <p>1 Q. Yeah. Did you have a supervisor when you worked</p> <p>2 in the bowling alley?</p> <p>3 A. I had two supervisors at the point in time. I</p> <p>4 had John, and then Kevin.</p> <p>5 Q. Okay. Who did you have first?</p> <p>6 A. I had John as my first supervisor.</p> <p>7 Q. John was your first supervisor. During what time</p> <p>8 period was John your supervisor?</p> <p>9 A. I don't recall.</p> <p>10 Q. Okay. Do you recall whether it was more than</p> <p>11 your first six months?</p> <p>12 A. More than my first six months.</p> <p>13 Q. More than your first year?</p> <p>14 A. No.</p> <p>15 Q. Okay. So less than a year.</p> <p>16 A. (No audible response.)</p> <p>17 Q. So John was your supervisor for six months to a</p> <p>18 year; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. Is there anything that you could look at to</p> <p>21 refresh your memory about when John was your supervisor?</p> <p>22 A. That I know of, there is not.</p> <p>23 Q. Okay. And what's John's last name?</p> <p>24 A. I do not recall.</p> <p>25 Q. Okay. And do you know what John's title was?</p> | <p>1 Q. Okay. And how long was Kevin Clark your</p> <p>2 supervisor?</p> <p>3 A. Up until I left the company.</p> <p>4 Q. Okay. Okay. Was there another bowling manager</p> <p>5 after Robert?</p> <p>6 A. There was Michael Gordon.</p> <p>7 Q. How long was Michael Gordon the bowling manager?</p> <p>8 A. Until I left the company.</p> <p>9 Q. Okay. When you first started in the bowling</p> <p>10 alley, let's say for your first six -- let's go three</p> <p>11 months of employment. What were your duties?</p> <p>12 A. My duties at the, at the bowling alley went from</p> <p>13 handing out shoes, cleaning tables, just doing</p> <p>14 maintenance and make sure that the GSR looked well and</p> <p>15 was presentable for the people entering the bowling</p> <p>16 alley.</p> <p>17 Q. Okay. That's for your first three months of</p> <p>18 employment?</p> <p>19 A. I do not recall.</p> <p>20 Q. Okay. Did your duties change from those at any</p> <p>21 point?</p> <p>22 A. Yes, they did.</p> <p>23 Q. How did they change?</p> <p>24 A. I went from having to work in the snack bar,</p> <p>25 having to either prepare food or make food, or do --</p>  |
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| <p>1 A. Bowling supervisor.</p> <p>2 Q. Okay. Was there a bowling manager when you were</p> <p>3 employed at the bowling alley?</p> <p>4 A. There was a bowling manager. The first bowling</p> <p>5 manager that I had was Bob Ramlow.</p> <p>6 Q. Who?</p> <p>7 A. Robert Ramlow.</p> <p>8 Q. Could you spell the last name?</p> <p>9 A. R-a-m-l-o-w.</p> <p>10 Q. Okay. That was your first bowling manager?</p> <p>11 A. Yes.</p> <p>12 Q. And how long was Robert your bowling manager?</p> <p>13 A. I cannot recall.</p> <p>14 Q. Okay. Same time period as John?</p> <p>15 A. Yes.</p> <p>16 Q. Approximately?</p> <p>17 A. Correct.</p> <p>18 Q. For six months to a year.</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So then let's go back to the bowling</p> <p>21 supervisor, who was your supervisor. After John, who</p> <p>22 became your supervisor?</p> <p>23 A. That was Kevin.</p> <p>24 Q. And do you recall Kevin's last name?</p> <p>25 A. Clark.</p>  | <p>1 handle money in there. I would have to, at times, go</p> <p>2 ahead and go into the back and help fix a machine, I</p> <p>3 would have to help with oiling, oiling the lanes from</p> <p>4 time to time. I would have to -- after a couple months</p> <p>5 they put me on a till, so that way I can cash customers.</p> <p>6 And from time to time my managers, after I was</p> <p>7 experienced enough, they would leave me in the bowling</p> <p>8 alley to go ahead and do supervisor work, without the</p> <p>9 supervisor pay.</p> <p>10 Q. Okay.</p> <p>11 A. Or title.</p> <p>12 Q. So you were an acting supervisor for some time</p> <p>13 period?</p> <p>14 A. Yes.</p> <p>15 Q. What time period?</p> <p>16 A. Do not recall.</p> <p>17 Q. Okay. So during the time you were handing out</p> <p>18 shoes and cleaning tables, did you get a bank?</p> <p>19 A. No, I did not.</p> <p>20 Q. Okay. And you can't remember how long that time</p> <p>21 period was?</p> <p>22 A. No. It's been a couple of years.</p> <p>23 Q. Yeah. Okay. So is there anything that you could</p> <p>24 look at to refresh your memory as to the first time you</p> <p>25 obtained a bank in connection with working in the</p> |



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| <p>1 bowling alley?</p> <p>2 A. I have no documentation of that.</p> <p>3 Q. Okay. So -- well, do you have any idea when the</p> <p>4 first time you got a bank is?</p> <p>5 A. I can't recall.</p> <p>6 Q. Okay. Do you know the number of total times you</p> <p>7 used a bank while working at GSR?</p> <p>8 A. I can't recall.</p> <p>9 Q. Any idea how many times?</p> <p>10 A. Wouldn't be able to get you an approximate</p> <p>11 number.</p> <p>12 Q. Pardon?</p> <p>13 A. I wouldn't be able to get you an approximate</p> <p>14 number that would be correct.</p> <p>15 Q. Okay. So there's no way you could estimate how</p> <p>16 many times you used a bank during your employment at</p> <p>17 GSR?</p> <p>18 A. No, ma'am.</p> <p>19 Q. Okay. No idea?</p> <p>20 A. No idea.</p> <p>21 Q. Okay. No way you can remember how often?</p> <p>22 A. No.</p> <p>23 Q. Nothing you can look at to refresh your</p> <p>24 recollection about that?</p> <p>25 A. Nothing at all.</p>   | <p>1 yes.</p> <p>2 Q. Okay. Well, are you saying that at some point</p> <p>3 when you were working at the front desk you then had a</p> <p>4 bank?</p> <p>5 A. Correct.</p> <p>6 Q. But you don't recall when?</p> <p>7 A. I don't recall the specific date of when I was</p> <p>8 assigned my first bank.</p> <p>9 Q. And you don't recall how often you used the bank?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Did you work the same shift the whole time</p> <p>12 you worked at the bowling alley?</p> <p>13 A. No, I did not.</p> <p>14 Q. Okay. What shifts did you work at the bowling</p> <p>15 alley?</p> <p>16 A. I can't recall.</p> <p>17 Q. Did you have certain times that you worked more</p> <p>18 than others?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall what hours you most often worked at</p> <p>21 the bowling alley?</p> <p>22 A. Off of the top of my head, I cannot recall.</p> <p>23 Q. Is there anything that you could look at to</p> <p>24 refresh your memory about what hours you worked at the</p> <p>25 bowling alley?</p>  |
| Page 18  | Page 20   |
| <p>1 Q. Okay. You didn't need a bank if you were handing</p> <p>2 out shoes; right?</p> <p>3 A. If I was only handing out shoes I would not need</p> <p>4 a bank. If I was handling customers as well as handing</p> <p>5 out shoes, I would need a bank.</p> <p>6 Q. You didn't need a bank if you were oiling the</p> <p>7 lanes; correct?</p> <p>8 A. It would depend on when it was. If we were short</p> <p>9 on people, that's when I would help out.</p> <p>10 Q. If you were short on people you would help out</p> <p>11 doing what?</p> <p>12 A. Help out with the mechanic's work, I would help</p> <p>13 out with the bowling -- with the snack bar. My specific</p> <p>14 duties were helping up front with the front desk and</p> <p>15 making sure that the bowling alley looked clean;</p> <p>16 however, when we were short or understaffed I would help</p> <p>17 out in different departments of the bowling alley.</p> <p>18 Q. Okay. So your specific duties were handling the</p> <p>19 front desk --</p> <p>20 A. Yes.</p> <p>21 Q. -- is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. And that didn't require having a bank; correct?</p> <p>24 A. Correct. For the first, for the first -- for the</p> <p>25 first couple of months that I started working there,</p> | <p>1 A. If documentation was presented, I could.</p> <p>2 Q. What kind of documentation?</p> <p>3 A. Documentation from the company.</p> <p>4 Q. Okay. Have you ever received your time records</p> <p>5 that were produced in this litigation?</p> <p>6 A. No, I did not.</p> <p>7 Q. Tell me your procedure that you would follow in</p> <p>8 coming to work at the GSR. Would you enter at the</p> <p>9 employee entrance?</p> <p>10 A. I would enter through the employee entrance.</p> <p>11 Q. Okay. What would you do after entering the</p> <p>12 employee entrance?</p> <p>13 A. I would have to, I would have to check in through</p> <p>14 security.</p> <p>15 Q. What did that consist of?</p> <p>16 A. That consisted of having my ID card, punching in</p> <p>17 my code, and then signing in at the front desk -- at the</p> <p>18 desk of the security.</p> <p>19 Q. Okay. So you took your employee badge and you</p> <p>20 swiped in, and then you signed in at the security desk?</p> <p>21 A. It was a security check-in. It wasn't clocking</p> <p>22 in.</p> <p>23 Q. Okay. But you signed something?</p> <p>24 A. Yes. Correct.</p> <p>25 Q. And that was?</p> |

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| <p>1 A. It was a paper letting the company know that you</p> <p>2 were on premises.</p> <p>3 Q. Okay. And did you do that during the entire time</p> <p>4 of your employment?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. What would you do after doing that?</p> <p>7 A. For, from what I do recall, I would have to go</p> <p>8 and collect the till at the cage.</p> <p>9 Q. Okay. So let's -- as we said before, sometimes</p> <p>10 you did get a bank; right? Or a till.</p> <p>11 A. It was during the initial parts of my employment.</p> <p>12 What I do recall most, there was -- I would have to go</p> <p>13 and collect a bank from them. And I would have to go</p> <p>14 ahead and go up there, it was about 10 to 15 minutes</p> <p>15 before I got onto my shift. I would go to the cage,</p> <p>16 collect the money, and then from there go back to my</p> <p>17 department, put my money into the till, and then go and</p> <p>18 clock back in for my actual shift.</p> <p>19 Q. Okay. So let's talk about that a little. So --</p> <p>20 A. Okay.</p> <p>21 Q. Well, even after you'd been employed for some</p> <p>22 time, you didn't use a bank every day; correct?</p> <p>23 A. From when I started, from when I started actually</p> <p>24 using a till, there would be a couple times. I can't</p> <p>25 recall the approximate number of times that I wasn't on</p> | <p>1 attendant. It would be different.</p> <p>2 Q. So depending on what your assignment was for the</p> <p>3 day, that would dictate whether or not you would use a</p> <p>4 bank.</p> <p>5 A. Correct.</p> <p>6 Q. Okay. So if you were a lane attendant, would you</p> <p>7 use a bank?</p> <p>8 A. If I was a lane attendant? No.</p> <p>9 Q. Okay. What other positions would you have where</p> <p>10 you wouldn't use a bank?</p> <p>11 A. There would be -- well, it would be pretty much</p> <p>12 just lane attendant, because the lane attendant is in</p> <p>13 charge of cleaning the bowling alley, making sure that</p> <p>14 people are getting their shoes, running food, taking</p> <p>15 care of parties that we have there. Different things.</p> <p>16 But it's one of those things that when you're in the</p> <p>17 bowling alley you had to go ahead and know how to do</p> <p>18 everyone's job.</p> <p>19 Q. Got it. But whether you were -- what you were</p> <p>20 assigned to do in any given shift would dictate whether</p> <p>21 or not you got a bank; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And did you all switch around?</p> <p>24 A. Please clarify on "switching around."</p> <p>25 Q. Well, there were other employees working in the</p>   |
| Page 22   | Page 24   |
| <p>1 a bank, but for the most part I was.</p> <p>2 Q. Okay. But how did you know if you were going to</p> <p>3 use a bank or not?</p> <p>4 A. I would have to go ahead and either get it, and</p> <p>5 then from there put it inside the till, and then from</p> <p>6 there I wouldn't touch it for the rest of the day.</p> <p>7 Q. Okay. But there were time periods where you did</p> <p>8 not go -- there were some days where you did not go to</p> <p>9 gather a bank; correct?</p> <p>10 A. It would depend on if I was instructed to from</p> <p>11 the day before.</p> <p>12 Q. Oh, so the day before you would be instructed as</p> <p>13 to whether or not to get a bank?</p> <p>14 A. We would know from our shift what we would be</p> <p>15 doing for the rest of the day.</p> <p>16 Q. How would you know?</p> <p>17 A. From the schedules we would be able to go ahead</p> <p>18 and tell right there.</p> <p>19 Q. What would it say on the schedule that would let</p> <p>20 you know whether or not you needed to get a bank?</p> <p>21 A. It would be from a specific shift that we would</p> <p>22 know where we were assigned to.</p> <p>23 Q. What do you mean by that? It would be from --</p> <p>24 A. Where we would be assigned to either the front</p> <p>25 desk as a cashier, we would be assigned to lane</p>  | <p>1 bowling alley; correct?</p> <p>2 A. Correct.</p> <p>3 Q. In your same position; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And did you -- did those employees also</p> <p>6 sometimes work as lane attendants where they wouldn't</p> <p>7 need a bank?</p> <p>8 A. We all shared different positions. We all did</p> <p>9 the same work.</p> <p>10 Q. Okay. So there were other employees who</p> <p>11 sometimes were working as a lane attendant and wouldn't</p> <p>12 need a bank; correct? At any given shift.</p> <p>13 A. Correct.</p> <p>14 Q. Okay. So where -- explain to me where you would</p> <p>15 go to get a bank when you needed a bank.</p> <p>16 A. We would have to go in through the, through the</p> <p>17 employee entrance, go through a long hallway, go</p> <p>18 upstairs. About a ten, about a ten-minute walk going up</p> <p>19 to the, going up to the cage. There is the cage that's</p> <p>20 up front for the casino, and in the back is where the</p> <p>21 employees go. That is where the employees would go.</p> <p>22 And that is on the -- I'd say that's on the eastern side</p> <p>23 of the casino, and we would have to go ahead and make</p> <p>24 our way to the bowling alley, which was on the western</p> <p>25 side of the casino. We wouldn't be able to go through</p> |

| Page 25  | Page 27   |
|--|---|
| <p>1 the casino, it would have to be through the employees'</p> <p>2 hallway.</p> <p>3 Q. Okay. So you'd walk about ten minutes from the</p> <p>4 employee entrance to the cage; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And then what would you do at the cage in</p> <p>7 order to collect a bank?</p> <p>8 A. We would have to -- I'm going to answer with I</p> <p>9 don't recall, because I don't recall the process for it.</p> <p>10 Q. Okay. Okay. Do you recall how long it took,</p> <p>11 though you don't recall the process?</p> <p>12 A. It would depend on how many employees there was</p> <p>13 from different departments inside there and how busy</p> <p>14 the, the day was going. And how many employees were on</p> <p>15 the clock from -- or not on the clock, but how many</p> <p>16 employees were working that particular day.</p> <p>17 Q. Okay. So give me a range of how long it would</p> <p>18 take.</p> <p>19 A. About maybe five to ten minutes, depending on how</p> <p>20 long it would be. I mean, sometimes it would be</p> <p>21 instantly, you would get it right there. Sometimes it</p> <p>22 would be about five to ten minutes because you would be</p> <p>23 waiting for other people to count their bank, get</p> <p>24 change, and that.</p> <p>25 Q. So ten minutes would be the longest.</p> | <p>1 that? You got your thing, you counted your money. What</p> <p>2 do you do next?</p> <p>3 A. From there I would go ahead and pretty much go</p> <p>4 through the hallways to get to the bowling alley, and</p> <p>5 from the bowling alley I would go ahead and put my bank</p> <p>6 into my till, and then go and clock in.</p> <p>7 Q. Okay. And when you say put bank into your till,</p> <p>8 where would the till be?</p> <p>9 A. The till would be at the front desk of the</p> <p>10 bowling alley.</p> <p>11 Q. Okay. Were there any other tills in the bowling</p> <p>12 alley?</p> <p>13 A. There would be -- there's three tills in the</p> <p>14 bowling alley, from when I was there. They would go</p> <p>15 ahead and instruct the person -- if I was covering</p> <p>16 someone's shift, they would instruct that person to take</p> <p>17 their till out, count their money, and then from there</p> <p>18 go back to the, go back to the cage, and I would go</p> <p>19 ahead and insert mine.</p> <p>20 Q. Okay. Where were the three tills in the bowling</p> <p>21 alley?</p> <p>22 A. One would be on the right side of the -- one</p> <p>23 would be on the right side of the front desk, one would</p> <p>24 be in the middle, and the other one would be on the left</p> <p>25 side.</p> |
| Page 26  | Page 28   |
| <p>1 A. Correct.</p> <p>2 Q. And that was rare; correct?</p> <p>3 A. Correct. And that is just for collecting, that</p> <p>4 is just for collecting the money part of it.</p> <p>5 Q. Well, was there some other part involved?</p> <p>6 A. All there was was just collecting money and</p> <p>7 getting change for your, for your till.</p> <p>8 Q. Okay. So sometimes it would be instantaneous,</p> <p>9 you would walk up and they would hand you your bank, and</p> <p>10 it took under a minute; correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Okay. So what would you do after they</p> <p>13 handed you your bank?</p> <p>14 A. I would go and count my money.</p> <p>15 Q. Okay.</p> <p>16 A. And then I would collect the change, as in</p> <p>17 quarters, dimes, nickels, and pennies, et cetera, for</p> <p>18 what I would need throughout the day.</p> <p>19 Q. Okay. How long would that take?</p> <p>20 A. It depends on how, how fast you can count money.</p> <p>21 Q. How fast could you count money?</p> <p>22 A. Can't recall.</p> <p>23 Q. Okay. No idea how long that took?</p> <p>24 A. No idea, ma'am.</p> <p>25 Q. Okay. Okay. And then what would you do after</p>   | <p>1 Q. Okay. And where would you clock in?</p> <p>2 A. I would have to clock in at the employee</p> <p>3 entrance, which was right outside the bowling alley, to</p> <p>4 the right-hand side.</p> <p>5 Q. Okay. So the -- is that -- did you use the same</p> <p>6 time clock, during your entire time of employment with</p> <p>7 GSR, to clock in?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And the time clock that you would use to</p> <p>10 clock in when beginning your shift was right outside the</p> <p>11 bowling alley; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. How long did it take you to get from the</p> <p>14 time clock to inside the bowling alley?</p> <p>15 A. From the time clock to inside the bowling alley?</p> <p>16 Q. Yeah.</p> <p>17 A. To the -- clarification. To the front desk, or</p> <p>18 to just inside the bowling alley?</p> <p>19 Q. Well, let's say after you -- if you were using a</p> <p>20 bank and you put your bank in the till, how long would</p> <p>21 it take you to get to the time clock? Let's do it that</p> <p>22 way.</p> <p>23 A. Really just depend if we were busy and they</p> <p>24 needed me to run, I would have to run. But if it was a</p> <p>25 more relaxed day, I would just walk there.</p>                                    |

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| 1       | STATE OF NEVADA )  |
| 2       | ) ss.<br>COUNTY OF WASHOE )                              |
| 3       |  |
| 4       | I, SUSAN E. BELINGHERI, a Certified Court                |
| 5       | Reporter for the State of Nevada, do hereby certify;     |
| 6       | That on Wednesday, the 17th day of May, 2017, at         |
| 7       | the hour of 11:17 a.m. of said day, at the offices of    |
| 8       | Grand Sierra Resort, 2500 East 2nd Street, Reno, Nevada, |
| 9       | personally appeared EDDY MARTEL-RODRIGUEZ, who was duly  |
| 10      | sworn by me, was thereupon was deposed in the matter     |
| 11      | entitled herein, and that before the proceeding's        |
| 12      | completion the reading and signing of the deposition has |
| 13      | been requested by the deponent or party;                 |
| 14      | That the foregoing transcript, consisting of             |
| 15      | pages 1 through 62, is a full, true, and correct         |
| 16      | transcript of my stenotype notes of said deposition to   |
| 17      | the best of my knowledge, skill, and ability.            |
| 18      | I further certify that I am not an attorney or           |
| 19      | counsel for any of the parties, nor a relative or        |
| 20      | employee of any attorney or counsel connected with the   |
| 21      | action, nor financially interested in the action.        |
| 22      | DATED: At Reno, Nevada, this 22nd day of May,            |
| 23      | 2017.  |
| 24      |  |
| 25      | SUSAN E. BELINGHERI, CCR #655                            |

---

# Exhibit D

# **COLLECTIVE BARGAINING AGREEMENT**

**between**

**GRAND SIERRA RESORT AND CASINO**

**and**

**CULINARY WORKERS UNION LOCAL 226**

**November 1, 2016-October 31, 2023**

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## **AGREEMENT**

THIS AGREEMENT is made and entered into as of the 1st day of November 2016, by and between MEI-GSR Holdings, LLC dba Grand Sierra Resort and Casino (hereinafter, called the "Employer") and its successors and assigns, and the Culinary Workers Union Local 226 (hereinafter, called the "Union").

### **WITNESSETH:**

WHEREAS, the parties, by negotiations and collective bargaining, reached complete agreement on wages, hours of work, working conditions and other related, negotiable subjects to be incorporated into a new Labor Agreement which shall supersede all previous verbal or written agreements applicable to the employees in the bargaining unit defined herein which may have existed between the Employer or between the predecessor of the Employer, if any, and the predecessor of the Union, if any.

NOW, THEREFORE, in consideration of the forgoing, the execution of this Agreement and the full and faithful performance of the covenants, representations and warranties contained herein, it is mutually agreed as follows:

## **ARTICLE 1: RECOGNITION AND CONTRACT COVERAGES**

### **1.01. Recognition of the Union.**

The Employer recognizes the Union as the collective bargaining representative for the Employer's employees working under the Union's jurisdiction at the Employer's facility located at 2500 East Second Street, Reno, Nevada 89595, and working in those job classifications listed in Exhibit 1 attached hereto and made a part of this Agreement. The Housekeeping Department (including only Guest Room Attendants, Housekeeping Runners, Housekeeping Utility Porters and Housekeeping Porters), Slot Associates and Slot Attendants will no longer be part of the bargaining unit. The term "employee" or "employees" as used in this Agreement means all persons directly employed by the Employer within the classifications set forth in Exhibit 1 attached hereto and made a part of this Agreement. The term "employee" or "employees" as used in this Agreement means all persons directly employed by the Employer within the classifications set forth in Exhibit 1, but excluding all other employees and excluding supervisors, as defined in the Labor Management Relations Act, as amended. Any classification established by the Employer not listed in Exhibit 1 where the employees perform duties covered by this Agreement shall be a part of this Agreement at a wage rate comparable to related job classifications. If the Union and the Employer cannot agree on the wage rate or the inclusion for any new classification, the issue may be submitted to the grievance procedure. The present practice of the hotel in regard to bargaining unit and non-bargaining unit work will continue, but cannot be expanded unless the Employer meets with the Union and bargains for any changes.

### **1.02. Masculine Gender.**

In this Agreement the use of masculine gender shall be construed to equally include the feminine.



## **ARTICLE 2: HIRING OF EMPLOYEES**

### **2.01. Hiring Procedure.**

Whenever the Employer finds it necessary to hire new employees for vacancies in job classifications covered by this Agreement, the Employer, upon hiring such new employees, shall make available for the Union, on a monthly basis, their names, classifications and wage rates for inclusion into the Union's list of employees represented. In the event the Union has available qualified employees for the job classification within the unit, the Union may furnish the same to the Employer for consideration by the Employer. The Union's selection of applicants for the referral shall be on a nondiscriminatory basis and shall not be based upon, or in any way affected by, membership in the Union or the Union's bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership policies or requirements, or upon an applicant's race, color, religion, sex, age, sexual orientation, or national origin.

The Employer shall be the sole judge of an applicant's suitability, competence and qualifications to perform the work of any job to be filled. The Employer may accept or reject any applicant for employment referred by the Union, provided that the Employer's acceptance or rejection of an applicant shall be solely upon the Employer's judgment and determination as to the factors set forth in the preceding sentence. The Employer's decision in matters pertaining to new hires shall not be subject to grievance and arbitration procedures.

### **2.02. Employee Orientation**

The Union shall be notified of orientation sessions for new employees and shall be afforded the right to meet with all new hires in the bargaining unit for a minimum of thirty (30) minutes during the orientation. The Union will be provided with the names, classifications and hire dates of all new bargaining unit employees prior to the orientation.

The Employer will not make any negative references about the Union during the Employer's interviewing, hiring and orientation process. The Employer shall not advise applicants or employees as to the need for or desirability of the Union membership.

### **2.03. No Individual Contracts**

No employee covered by this Agreement shall be compelled or allowed to enter into any individual contract or agreement with the Employer concerning conditions or employment which varies the terms or conditions of employment contained in this Agreement.

### **2.04. Recruitment Wage Adjustment**

If the Employer finds its wages are not competitive in the current market, causing the Employer to lose employees and/or be unable to recruit new employees, the Employer shall notify the Union of the need to increase the starting wage of a non-competitive classification. The Union shall respond within two (2) weeks of notification to bargain over the increase. If the new starting rate is higher than the rate of any current bargaining unit members within that classification, the Employer shall automatically adjust those members' current rate, independent of any scheduled wage adjustments pursuant to this Agreement. Any increase will be retroactive to the date of notice. If the Union and Employer do not agree on the increase or if the Union fails to respond within two (2) weeks of notice, the Employer may implement the increase. Otherwise, the

Employer may not implement any such increase without notification to the Union and a signed agreement between the Union and the Employer.

### **ARTICLE 3: STATE LAWS**

#### **3.01. Invalidity of a Portion of Agreement.**

If any portion or portions of this Agreement are found to be invalid or void by a competent court, board or authority, the remaining portions of the Agreement shall remain intact and in effect.

#### **3.02. Indemnification.**

The Union will indemnify and save the Employer harmless against any and all claims, demands or other forms of liability, which may arise out of or by reason of, any action taken or not taken by the Employer, at the request of the Union, in violation of the Nevada Right-to-Work law.

#### **3.03. Check-Off.**

(a) Monthly Dues. The Employer will check off and remit to the Union initiation and monthly dues for employees who have executed and furnished to the Company a Payroll Deduction Authorization in the form of Exhibit 2 attached to this Agreement, which by this reference is made a part hereof.

(b) Billing Procedure. The Union will remit to the Employer a monthly billing stating the amount to be deducted from the wages of each employee pursuant to the Payroll Deduction Authorization form signed by the employee. (See Exhibit 2 for a copy of such authorization form). The Employer will deduct the funds so billed and remit them to the Union no later than twenty (20) days of the month following receipt of the monthly billing.

(c) Indemnification. The Union shall indemnify and hold the Employer harmless against any and all claims, demands, suits, and other form of liability which shall arise out of or by reason of action taken or not taken by the Employer at the request of the Union under the terms of this Article.

### **ARTICLE 4: UNION REPRESENTATIVES**

#### **4.01. Access to Employer Property.**

Non-employee Union Representatives shall have the following rights of access to bargaining unit employees on the Employer's property:

Visitation Rights. The Union shall designate in writing to the Employer the names of the authorized representatives who may exercise the Union's visitation rights.

Designated Areas. The designated Union Representatives shall have access to areas where bargaining unit employees are working solely for the purpose of observing matters relevant to the investigation of grievances. The designated Union Representative shall also have access to the employee cafeteria in order to conduct Union business. The majority of discussions/meetings between employees and the Union Representatives will only occur in the employee cafeteria, provided such meetings do not disrupt the atmosphere conducive to the employees' meal/break periods.

Work Interference. In no case shall such access interfere with the work of any employee or guest's activities or otherwise disrupt the Employer's operations.

Sign-In. Before entering the Employer's property for the purposes of contacting bargaining unit employees, the designated non-employee Union Representatives shall be required to report to a designated office, sign in and wear appropriate identification while on the premises of the Employer. In the event the designated office is not open, the Union Representative shall contact the security shift supervisor.

#### **4.02. Shop Stewards.**

Both the Employer and the Union agree that the Union may, at its discretion, have Shop Stewards from among the bargaining unit employees covered by this Agreement. The parties agree that there shall be no more than twenty (20) Shop Stewards and twenty (20) alternates. The Union shall notify the Employer in advance and in writing of the names of all Shop Stewards and alternates.

It shall be the recognized duty of the Shop Stewards to assist the bargaining unit representatives of the employees in monitoring contract compliance. Union business will be conducted by Union members, employees and Shop Stewards on their own time. The Shop Stewards shall confine themselves to the business of the Employer during working hours and they will not engage in any Union activities during working hours which will in any way, either directly or indirectly, interfere with operations, except as is expressly provided for in this Agreement.

The Employer agrees that it shall not discriminate against Shop Stewards because of their activities as such. When practical, and in accordance with the needs of the employer's business, Shop Stewards shall be scheduled to be off without pay to attend Union meetings so long as at least one (1) week's written notice has been given of the meeting date to the designated Employer representative.

#### **4.03. Employee Information.**

To permit the Union to properly and efficiently carry out its responsibilities, the Employer shall provide the following information to the Union:

- (a) By the tenth (10th) day of each month a list of all employees hired into the bargaining unit or transferred into the bargaining unit during the preceding month, including each employee's name, social security number, department, job title, home address, phone number, gender, status (full-time, part-time, etc.), date of hire, date of birth and ethnicity.
- (b) By the tenth (10th) day of each month a list of all bargaining unit employees terminated, placed on leave of absence or transferred out of the bargaining unit during the preceding month including each employee's name, social security number, the reason for such termination, leave of absence or transfer and the date(s) of such personnel transactions, and the expected date of return for leaves of absence.

The reports described in subsections (a) and (b) shall be sent to the Union by fax or mail or downloaded from the Company's FTP site by the Union or uploaded by the Company to the Union's FTP site or via email after the Union has demonstrated to the Employer that the proper "PGP" security encryption measures exist in the Union's network.



The Employer shall furnish the Union with a quarterly list of all employees in the bargaining unit, including each employee's name, social security number, department, job title, home address, phone number, status (full-time, part-time, etc.) and date of hire, date of birth and ethnicity. Data regarding employee ethnicity will not be shared with any person, media or entity outside the Union and employee benefit funds. The Union agrees to sign confidentiality form pertaining to the use of such data. This report shall be in an Excel spreadsheet or in a formatted text format like .csv format, containing header information in any one of the following media:

1. Downloaded by the Union from the Company's FTP site;
2. Uploaded by the Company to the Union's FTP site;
3. Via email transmission (See 4.02(c) above); and
4. CD-ROM.

## **ARTICLE 5: SALARIES AND WAGES**

### **5.01. Weekly Payment.**

Regular employees shall be paid weekly, semi-monthly or bi-weekly as is the practice of the Employer, in accordance with the wage scales set forth in Exhibit 1. The Employer may change the pay cycle with thirty (30) days' advance notice to the Union. Records on the source and dates of any gratuities included on paychecks shall be made available to the employees on request.

### **5.02. Equal Pay.**

The wage scales set forth in Exhibit 1 shall apply equally to male and female employees covered by this Agreement.

### **5.03. Deductions and Donations.**

(a) No employee shall be required to subscribe to any form of insurance or to make contributions or suffer any deduction from wages without written authorization of such employee, except as may be required by law.

(b) Cash Shortages. The Union agrees that the Employer can change its cash shortage procedures upon providing a 30-day notice to the Union. In no instances will the Employer make automatic cash deductions from employees' wages for any cash shortages until after consultation with the employee and the responsibility for the shortage has been established by the Employer.

### **5.04. Gratuities.**

All gratuities left by the customers are property of the employees exclusively, and no Employer or department head not covered by this Agreement shall take any part of such gratuities or credit the same in any manner toward the payment of an employee's wages. This provision does not apply to any present gratuity distribution in a department where splits include payment to supervisors/managers.

When the Employer has special events, sales promotions or other functions where the price charged includes gratuities, the Employer may publish and distribute literature, brochures and tickets for same which contain a notice or statement that gratuities are included in such price.



Gratuities, regardless of the amount, signed by a registered hotel guest on the guest's individual hotel check, or by a registered hotel guest or other customer on his individual credit card, shall be paid to the employee in cash either after the end of the shift or immediately prior to the commencement of the employee's next shift; provided that, in the case of gratuities signed on a hotel check, the employee must have followed the Employer's established policy for verifying that the person who signed for the gratuity is a registered hotel guest and is not exceeding his established credit limit. No employee shall solicit gratuities from other employees or guests.

A special event shall be deemed to be any event for persons or groups arranged by a travel agent, booking agent, hotel sales representative, convention agent, promotional representative, operator or any other individual or agency where pre-delivered tickets or coupons, or package prices for food and/or beverages to be served to patrons of such events are involved and where regular employees of an establishment covered by this Agreement provide such service, excepting those from the exceptions listed in Article 5.

Presentation of Checks. Management reserves the right to present checks to guests in situations deemed appropriate; however, it is understood that gratuities associated with the check are the property of the Food Server.

#### **5.05. Complimented Guests.**

On those occasions when individuals or members of a group are provided with food and/or beverages which are complimented by the Employer, there shall be no guaranteed gratuity; provided, however, that the Servers who provide service shall be given the opportunity to present a check to the guest or guests being complimented.

(a) Complimented Groups. On those occasions when members of a group, which is not a special event as defined in Section 5.04(c), are complimented as a group and not individually, with food and/or beverages, except as provided in Section 5.04(6), there shall not be any guaranteed gratuity payable by the Employer.

(b) Officers Checks. Officers' checks and the employees' dining room are exempt from the provisions of Section 5.04.

(c) According to the schedule provided at negotiations, gratuities paid by the Employer for all other complimentary services shall be in the Employer's discretion and proceed through Payroll so as to appear on the employee's check.

#### **5.06. Terminated Employees.**

(a) Applicable Laws to Article 5, Section 607.020-Discharge of an Employee-Immediate Payment: Whenever the Employer discharges an employee, the wage and compensation earned and unpaid at the time of discharge shall become due and payable within twenty-four (24) hours.

(b) Section 608.030-Payment of Employee Who Resigns or Quits His Employment: Whenever an employee resigns or quits his employment, the wages and compensation earned and unpaid at the time of his resignation or quitting must be paid no later than:

1. The day on which he would have regularly been paid the wage or compensation; or

2. Seven (7) days after he quits or resigns, whichever is earlier.

#### **5.07. Health and Welfare.**

The Union and the Employer agree that eligible employees will be covered by the Grand Sierra Resort Health & Welfare Plans for the life of this Agreement. Bargaining unit employees will be required to pay the same monthly rate as non-bargaining unit employees. The Union understands and agrees that the current healthcare benefit costs are split on an approximately 75 percent/25 percent basis between eligible employees and the Employer, with the 75 percent being paid by the Employer. Future increases in healthcare benefits costs will similarly be passed through to bargaining unit employees on an approximately 75 percent/25 percent basis, with the 75 percent being paid by the Employer. Upon renewal of insurance contracts, the Employer may modify the terms, benefits, deductible and other terms of the Health and Welfare plans at its discretion; however, the bargaining unit employees will be subject to the same terms and conditions as non-bargaining unit employees. Finally, the Employer is and has been offering a Health and Welfare program for part-time employees, at 100 percent cost to the employee.

GSR agrees to negotiate in good faith with the insurance carrier for the continuation of these benefits and pass the cost to part-time employees based on the contract the Employer is able to negotiate.

#### **5.08. Superior Worker.**

The wage scales in this Agreement are minimum scales and do not prohibit the Employer from paying higher wages. It is specifically agreed that employees compensated at said higher wage rates may be returned to the scales published herein at the sole discretion of the Employer.

Employees paid Superior Workmen rates shall have their wages increased by amounts of not less than the increases in the minimum wage scales as specified in Exhibit 1, attached to and made part of this Agreement, for the classifications in which they are employed.

#### **5.09. Combination Jobs and Cross-Training.**

When an employee works in two (2) or more job classifications in any day, he shall be paid for that day at the rates of pay for the time worked in each classification; provided that this shall not apply in cases of relief for meal and rest periods. Further, the different pay rates for different job classifications apply only if employees actually work in a different classification for more than one (1) hour. If employees perform the duties of both classifications interchangeably throughout the day, they will be paid a blended rate, which would be the average of the rates applicable to the different classifications.

Bar helper and bar porter combination. The Employer will eliminate the bar porter position and combine the duties of bar helper and bar porter. As bar helper is the higher classification, it will remain in existence, while the bar porter classification will be eliminated. Bartenders will be expected to perform the duties outlined in the bartender job description as it presently exists, which include light cleaning. At the Union's request, as a one-time and non-precedential arrangement, the eliminated bar porters will have priority in any bar helper and utility steward positions that may become available, on the condition that they have the requisite qualifications or are readily trainable.

Cross-training is to occur throughout the organization-up, down, and on peer level classifications to ensure that employees are trained in multiple positions and can assist as business need requires. If cross-training is voluntary, the cross-training will be by seniority. If cross-training is involuntary, it will be conducted in reverse seniority. Further, in all jobs and classifications, employees' duties will now include light cleaning in their usual areas of work (e.g., wiping things down, picking up items left by customers, removing trash from the floor). This will not result in any change of pay or classification.

## **ARTICLE 6: DISCHARGE**

### **6.01. Cause for Discharge.**

(a) No regular employee, after having completed the probationary period under Section 17, shall be discharged except for just cause. Prior to any discharge for reasons other than dishonesty, willful misconduct, drunkenness, drinking on the job, being under the influence of a controlled substance on duty, unlawful possession of a controlled substance, or using a controlled substance at any time while on the Employer's premises, unlawful usage in accordance with the Employer's Drug & Alcohol policy, serious improper behavior or discourtesy toward a guest, insubordination, failure to report for work in accordance with the Employer's Attendance policy, walking off the job during a shift, possession of weapons on the Employer's property, gross incompetence, workplace violence, theft of Employer, co-worker or guest property and sexual harassment or any other inappropriate harassment of a co-worker or guest, such an employee must be given a written warning and an opportunity to correct the deficiency. The above provisions relating to controlled substances will not apply to medicine lawfully prescribed for the employee using the substance by a licensed physician and used in accordance with the prescription.

Upon the discharge or suspension of any employee for reasons other than dishonesty, the reason therefore shall be given to the employee in writing, and a legible copy thereof shall be mailed or given to the Union within seventy-two (72) hours after the discharge or suspension. When an employee is discharged or suspended for willful misconduct, the notice shall contain the specific conduct or offense deemed by the Employer to constitute willful misconduct. Upon request by the Union, legible copies of all documents relied upon by the Employer in making the discharge or suspension, including copies of any written complaints or reports concerning the employee, either by the customer, an outside agency, or by the Employer's own employees, and copies of any relevant cash register tapes, shall be furnished to the Union within three (3) working days after such request. An employee may not be discharged solely on a basis of verbal complaints by customers. The Union shall furnish the Employer with any statements and/or documents pertinent to the investigation within seventy-two (72) hours of request. The Union will have the right to view copies of videotapes at the hotel during an investigation of a case.

### **6.02. Warning Notices.**

(a) Warning notices issued to employees must specify the events or actions for which the warning is issued. Warning notices shall be issued to employees as soon as possible after the Employer is aware of the event or action for which the warning notice is issued and has a reasonable period of time to investigate the matter, and may be issued by the Employer any time throughout the day, as business allows. All warning notices must be given to employees no later than fifteen (15) days from the occurrence or knowledge of the event which results in the warning, except for ongoing investigations. A legible copy of any written warning notice shall be given to



the employee for review by himself and, if desired, to the Union. Legible copies of all documents relied upon by the Employer in issuing the warning notice, including copies of any written complaints or reports concerning the employee, either by a customer, an outside agency or by the Employer's own employees, and copies of any relevant cash register tapes, shall be furnished to the Union within three (3) working days after such request.

The names and addresses of customers who make written complaints against an employee shall be furnished to the Union on request if such are relied on by the Employer as a basis for the warning notice. An employee may not be issued a warning notice solely on the basis of verbal complaints by customers. Warning notices, written customer complaints and reports of outside agencies or the Employer's own security force concerning conduct of an employee (except sexual harassment or any other inappropriate harassment of a co-worker or guest) shall become null and void one (1) year after the date of issuance and may not thereafter be used as a basis for or in support of any subsequent discharge or disciplinary action.

#### **6.03. Final Warning.**

No employee shall receive a final written warning or be paid off or have his shift, station or days off changed for discriminatory reasons, or for disciplinary purposes unless a prior written warning has been given to the employee. If an employee is arrested or charged with a crime related to job conduct, the Employer may take disciplinary action for just cause without regard to the disposition of the criminal charge. In such circumstances, the Employer bears the burden of demonstrating just cause independent of the legal process, and the disciplinary actions can be grieved pursuant to this Agreement. In such cases, the employee's job status shall be determined by this Agreement. Alternatively, if an employee is arrested or charged with a felony, or a misdemeanor offense that tends to discredit the Employer or its operations, or tends to reflect unfavorably on the Employer or its operations, the Employer may suspend the employee without pay pending the outcome of the charge. If the employee is found not guilty, the employee shall be reinstated, and the Employer shall not then be able to take disciplinary action. If the employee is found guilty, the employee may be terminated. No employee shall be disciplined on account of a criminal proceeding which is not employment-related. After a period of eighteen (18) months, final written warnings shall not be considered in any disciplinary proceedings, except sexual harassment or any other inappropriate harassment of a co-worker or guest.

#### **6.04. Time of Discharge.**

The Employer has discretion to discharge employees at any time, subject to the provisions of this Agreement.

#### **6.05. Controlled Substance.**

In accordance with the Company practice, where there is reasonable cause to believe that an employee is under the influence of alcohol or a controlled substance, the employee, after being notified of the contents of this sub-Section, must consent to an immediate physical examination at an independent medical facility or suffer the penalty of discharge. The Employer shall pay for the cost of the examination. A blood alcohol level of .08 provides an absolute presumption that the employee is under the influence of alcohol or, in the event there is a statutory revision lowering the blood alcohol level by the state.

## **ARTICLE 7: EARLY SHIFT RELEASE**

### **7.01. Voluntary.**

An employee, with the Employer's approval, may voluntarily leave work early if he so desires and shall be paid only for the time actually worked on that shift. The Employer may solicit volunteers for early shift release who shall be paid only for the time actually worked on that shift.

### **7.02. Involuntary Release.**

The Employer may request that employees leave their shifts early due to lack of business, whereupon employees shall be paid a minimum of two (2) hours or one-half (1/2) of their scheduled shift, whichever is greater; provided however, that this provision is not intended to be used in bad faith or to deny an employee legitimate overtime pay and provided further that the Employer will take first take request for early outs and then require early outs in ascending order of seniority of those employees on duty, provided this does not require the Employer to pay overtime. When a tipped employee is required to take an early out, under this section, the open station, if any, shall be offered in descending order of seniority to those employees on duty.

## **ARTICLE 8: DISCRIMINATION**

### **8.01. Prohibited Discrimination.**

There shall be no discrimination by the Employer or the Union against any employee because of membership or non-membership in or activity on behalf of the Union, provided that an employee's Union activities shall not interfere with the performance of his or other employees' work for the Employer. In accordance with applicable laws, there shall be no discrimination against any employee with respect to compensation, terms, conditions, privileges of, or opportunities for employment because of race, color, religion, sex, age or national origin, ancestry or disability, or sexual orientation.

### **8.02. Confessions or Statements.**

When a supervisor, manager, or security person interviews an employee for disciplinary reasons, or in a fact-finding interview which might reasonably lead to discipline, the employee shall have the right to be represented by an authorized Union Representative or Shop Steward. It shall be the responsibility of the employee to request such a representative or steward. Upon the employee's request, the Employer shall contact the representative or steward, provided that the Union has supplied an updated list containing the contact information and schedule of the representative or steward. If the Union has not provided such a list, it will be up to the employee to contact the representative or steward. If an authorized Union Representative or Shop Steward is not available, the employee can request that the interview be rescheduled or continue with the interview without the representative or steward, if the employee so chooses.

Each employee shall be required to sign a background investigation release for the purpose of allowing the Employer, Gaming Control Board, Nevada Gaming Commission, or any law enforcement agency to check the background and history of the employee or prospective employee.

## **ARTICLE 9: WORK SHIFTS, WORKWEEK AND OVERTIME**

### **9.01. Shift and Weekly Overtime.**

The workweek pay period shall be from Friday through Thursday. For purposes of computing overtime, for an employee scheduled to work five (5) days in one (1) workweek, any hours in excess of eight (8) hours in a day or forty (40) hours in a week shall constitute overtime. For an employee scheduled to work four (4) days in one (1) workweek, any hours worked in excess of ten (10) hours in a day or forty (40) hours in a week shall constitute overtime. Overtime shall be effective and paid only after the total number of hours not worked due to early outs is first subtracted from the total number of hours actually worked per shift, per workweek. Overtime shall not be paid under this Section for more than one (1) reason for the same hours worked.

Employees absent for personal reasons on one (1) or more of their first five (5) scheduled days of work in their workweek shall work at the Employer's request on a scheduled day off in the same workweek at straight time. If the Employer anticipates such scheduling, the Employer shall provide five (5) days' advance notice.

This provision will remain in effect for the duration of this Agreement. However, at the expiration of the Agreement, the Employer shall have the right to compute and pay overtime in accordance with the provisions of existing federal and state law, and Union employees shall not have the right to overtime pay above and beyond the applicable federal and state law requirements.

### **9.02. Days Off.**

The Employer supports the principle of providing its employees with two (2) days off, or three (3) days off for employees on a ten (10)-hour per day schedule, during each seven (7)-day work period. The Employer will schedule them consecutively, except that when business conditions dictate, the Employer may split them. In those instances, scheduling of split days off will be done according to the provisions of Section 17.04(b) of this Agreement. An employee may voluntarily split his/her days off.

### **9.03. Single Shift.**

No employee shall be required to work more than one (1) shift on any one (1) calendar day. This shall not prohibit the performance of overtime work consecutive with the employee's regular shift, as requested by the Employer.

### **9.04. Posting.**

The Employer shall post each week in a conspicuous place in each department, available to Union Representatives, a work schedule showing the first and last name and classification of each employee, and specifying days off and starting and finishing time. When employees not originally scheduled to work during any week are later called to work during that week, their names and classifications shall be added to the posted work schedule not later than the end of the first shift they work.



## ARTICLE 10: CATEGORIES OF EMPLOYEES

### 10.01. Regular Full-Time Employees.

Regular Full-Time employees are employees carried on the Employer's regular payroll who are hired to work thirty (30) hours per week or more and are eligible for all benefits provided for in this Agreement.

### 10.02. Regular Part-Time Employees.

Regular Part-Time employees are employees carried on the Employer's regular payroll who are hired to work less than thirty (30) hours per week.

### 10.03. Extra Employees.

Extra employees are employees hired to perform work in addition to or as vacation, LOA or temporary absence replacements for regular employees. Extra employees shall not be covered by Articles 6, 11, 13 (except in relation to FMLA), 17, or by Sections 5.07, 9.02, and 9.03.

### 10.04. Reduction of Full-Time Employees to Part-Time.

At any point in time, no more than 25% of the entire bargaining unit may be comprised of part-time employees. Additionally, no more than 50% of cocktail servers can be part-time employees. Regarding the cocktail servers, 15% of the 50% limit stated in the prior sentence shall be achieved through attrition and hiring new employees. With respect to all other classifications, no more than 35% of the employees in each classification can be part-time employees, and the attrition requirements do not impact Employees who are on-call (or "extra") and are not considered for purposes of determining the applicable percentages.

The Employer may freely, and in its absolute discretion, within the limits set forth in this paragraph as to the percentages of full-time vs. part-time employees, move employees by order of seniority from full-time to part-time and vice-versa. If a classification or total limits are exceeded, for any reason other than the Employer moving an employee from full-time to part-time (such as termination, resignation, retirement, transfer, etc.), the Employer will have a reasonable opportunity to adjust the work force (including hiring, transfer and/or moves from part-time to full-time) without being in violation of the applicable limits. The Employer may elect to move some of the employees to part-time by attrition (e.g., keep current full-time employees and replace them upon separation of employment with part-time employees). However, except as otherwise provided in this paragraph, the Employer has the absolute discretion to move employees by seniority, at any time, between full-time and part-time classifications.

## ARTICLE 11: PAID TIME OFF

### 11.01. Amount of PTO.

All Union regular full-time eligible employees scheduled to work an average of at least 30 hours per week earn PTO based on length of service. PTO time accrues on a monthly basis from the date of hire as follows:

| Months of Years of Continuous Service<br>With Employer | Amount of Paid PTO |
|--|--------------------|
| Hire to 1 year (6.66 hours per month)                  | 80 hours per year  |

| <b>Months of Years of Continuous Service<br/>With Employer</b> |                         | <b>Amount of Paid PTO</b> |
|--|-------------------------|---------------------------|
| 1 year   | (10.00 hours per month) | 120 hours per year        |
| 5 years  | (13.33 hours per month) | 160 hours per year        |

Employees will continue to accrue PTO until their bank reaches 2 times their annualized number of allowable PTO hours. However, the maximum number of accrued PTO hours will be 240.

Employees who reach the 240 hours cap will not accrue any more PTO until they use some of the PTO already accrued.

All regular part-time employees who work 16 hours per week will accrue PTO at the rate of 3.33 hours per month and will continue to accrue until the bank reaches 80 hours. Once they reach the 80-hour maximum, employees will not accrue any additional PTO until they use some of the PTO already accrued.

For employees who have accrued PTO above the 240-hour limit as of the day when this Agreement is signed, all current accrued but unused PTO over 240 hours will be grandfathered in and employees will be allowed to use it for 1 year after the effective date of the new contract, or sell it back to the Employer for 50 cents on the dollar, as provided above. If grandfathered PTO is not used within 1 year after inception of the new contract or sold back to the company, it will be lost.

Additionally, Union employees can sell their accrued PTO hours back to the Employer (twice a year on the announced dates in June and December) at 50 cents on the dollar. Employees can sell their accrued, but unused PTO to the Employer at 100 percent if they fulfilled the requirements for a PTO request.

An employee whose employment terminates, for whatever reason (voluntary or involuntary), prior to completion of the employee's introductory period will not receive payment for his or her accrued but unused PTO. An employee whose employment terminates, for whatever reason (voluntary or involuntary), after completion of the employee's introductory period will receive payment for accrued but unused PTO with the employee's final paycheck.

#### **11.02. Break in Employment.**

A change in ownership of the Employer shall not break an employee's continuity of service for the purpose of PTO eligibility. Except as provided otherwise in Section 13, time absent from work while on authorized leave of absence shall not break an employee's continuity of service.

Neither time absent from work while on authorized leave of absence nor while on layoff shall change an employee's anniversary date.

#### **11.03. Time of Taking PTO.**

PTO is due on the employee's anniversary date of employment as set forth in Section 11.01, and shall be requested in accordance with these time limits: by November 1 for the following January through April period; by March 1 for May through August period; and by July 1 for September through December period. The Employer shall grant PTO to those employees who have given proper notice. PTO requests shall be made in writing to the Employer, and the Employer shall



provide the employee with a copy of the request indicating that such request was received. The Employer shall respond to the PTO request within three (3) weeks. An employee's PTO request may be denied if any of the following conditions apply:

1. The employee did not comply with the time limits for requesting PTO.
2. The employee is not eligible for PTO by the date the requested PTO would begin.
3. The employee requesting the PTO has less seniority than another employee requesting the same PTO period.

When an employee is denied his/her initial PTO request, the Employer shall provide the employee with a list of available PTO periods. The employee may then request PTO from the provided list within one (1) week. The Employer shall respond to the second request within two (2) weeks.

After the outlined timelines and procedures for PTO requests are followed, awards will be given on a first-come basis.

An employee's second request may still be denied if any of the above-enumerated conditions apply. No more than five percent (5%) of regular employees in any job classification or restaurant may take the same PTO period during blackout periods. The blackout restriction applies to:

Super Bowl Weekend;

Memorial Day Weekend;

Fourth of July Weekend (including whichever day of the week the Fourth of July falls on);

Hot August Nights;

Labor Day Weekend;

Burning Man Week;

Thanksgiving Day and the corresponding weekend; and

Winter Break (December 24 through January 2).

No more than ten percent (10%) of regular employees in any job classification or restaurant may take the same PTO period during non-blackout periods. However, if business conditions allow, the Employer may increase that percentage at the Employer's sole discretion.

#### **11.04. PTO Pay.**

PTO must be taken as paid time off, and no employee shall be allowed to work for the Employer during his PTO. PTO pay shall be computed on the basis of the employee's current rate of pay. Provided, however, that if an employee is regularly scheduled to work in two (2) or more classifications with different rates of pay, his PTO pay shall be computed at the rate of pay at which the majority of hours have been worked in the preceding anniversary year. For temporary layoffs of less than ninety (90) days, employees have the option of taking their PTO earned or

continuing to carry it. If a layoff exceeds ninety (90) days, all earned PTO is paid out. Only earned PTO is paid. Employees may request upfront pay of PTO when their PTO is to last 5 days or more, provided that the employee pays a \$5.00 administrative fee for the special processing of a separate check. The Employer may charge the \$5.00 administrative fee as a payroll deduction. Unless the employee requests special processing and upfront pay, the Employer will include the PTO pay in the employee's regular paycheck. Pay for PTO lasting less than 5 days will be included in the employee's regular paycheck.

## **ARTICLE 12: WAGE INCREASES**

### **(a) Increases Upon Ratification**

At ratification, bargaining unit employees in EVS, Laundry, Stewards and Convention Setup shall receive the following increases in hourly rates based on years of service as of the date of ratification:

|                                     |        |
|-------------------------------------|--------|
| 0-2 Years of Service                | \$1.00 |
| More than 2 years and up to 6 years | \$1.25 |
| More than 6 years                   | \$1.50 |

At ratification, Quick Serve Attendants (QSR Attendants) shall receive an increase in hourly wages such that all QSR attendants shall receive a minimum of \$11.50 per hour.

All other bargaining unit employees shall receive a \$0.20 increase in hourly pay upon ratification.

### **(b) Annual Increases**

In addition, the Employer shall pay the following additional amounts as of the dates shown to all bargaining unit employees.

| <u>Date</u>      | <u>Total Wage Increase</u> |
|------------------|----------------------------|
| November 1, 2018 | \$0.25 per hour            |
| November 1, 2019 | \$0.27 per hour            |
| November 1, 2020 | \$0.30 per hour            |
| November 1, 2021 | \$0.32 per hour            |
| November 1, 2022 | \$0.35 per hour            |

## **ARTICLE 13: LEAVE OF ABSENCE**

### **(a) Leave of Absence.**

Union employees will be subject to the Employer's standard and uniform policies on the Family and Medical Leave Act ("FMLA"), the Uniform Services Employment and Reemployment Act ("USERRA"), and the discretionary Personal Leave of Absence. The Union shall have the right to review these policies 30 days before the policies become effective. Nothing in this Article shall preclude the Employer from complying with applicable law before giving the Union an opportunity to review any necessary policy changes, if such law gives the Employer less than 30 days to effectuate compliance.

**(b) Bereavement Leave.**

If a full-time employee loses a member of his/her family (identified below including in-laws and step family), the employee is eligible for up to two (2) days of paid bereavement leave. If the bereavement leave requires the employee to travel more than 500 miles from his/her residence, the employee shall be granted up to three (3) days of paid bereavement leave.

|             |         |
|-------------|---------|
| Parent      | Spouse  |
| Child       | Sibling |
| Grandparent |         |

Eligible days of pay will be regularly scheduled work days.

The Employer may grant additional days of unpaid bereavement leave at its discretion.

The Employer may request documentation to verify the need for bereavement leave upon employee's return.

**ARTICLE 14: MEALS**

**14.01. Meals.**

For the convenience of the Employer and employees, all employees covered by this Agreement may take their meals in the employee cafeteria, upon paying \$2.00 for a hot meal. Said meals shall be palatable, wholesome and comparable in quality to those served to customers. The \$2.00 fee will apply uniformly to both Union and non-Union employees unless another current collective bargaining agreement precludes such charges. The Employer will make two (2) or more microwaves and additional silverware available to employees, but will not provide any other food storage facilities to employees. The Employer will make soup, salad, cold breakfasts and beverages available to Union employees in the front area of the cafeteria, where employees will not need to swipe their employee cards to access such items. The existing rule that employees may not remove food or drinks from the cafeteria remains in effect.

The Employer will have discretion to implement any policies related to the administration of the \$2.00 fee per hot meal, including refusal to accept cash and handling the payments through payroll deductions. The Employer shall allow each employee an uninterrupted unpaid meal period of thirty (30) minutes. The Employer will provide travel time where appropriate, but travel time will not exceed five (5) minutes to and from the employee's place of work.

The Employer will have management discretion to adopt the policies and procedures, and to make any changes necessary to implement the 30-minute unpaid meal period, including but not limited to installing new time clocks and clocking in/out procedures, installing security doors, requiring employees to clock in/out at particular locations, and passing cards to record in/out times in certain areas of the property.

**14.02. Break Periods.**

Scheduling of break periods shall be at the sole discretion of the Employer. However, such schedules shall be reasonably related to each shift. Employees may combine their meal and break periods, resulting in a 40 to 60-minute break where the first 30 minutes are unpaid.

| HOURS WORKED                   | MEAL ENTITLEMENT   | BREAK ENTITLEMENT  |
|--------------------------------|--|--|
| Less than 4 hours              | No meal period<br>No \$2.00 hot meal                       | One 10-minute break  |
| 4 hours but less than 6 hours  | No meal period<br>No \$2.00 hot meal before or after shift | One 10-minute break  |
| 6 hours but less than 8 hours  | 1 unpaid meal period**<br>One \$2.00 hot meal during shift | One 10-minute break  |
| 8 hours but less than 10 hours | 1 unpaid meal period**<br>One \$2.00 hot meal during shift | two 10-minute breaks<br>(May be combined with meal period)   |
| 10 hours or more               | 1 unpaid meal period**<br>One \$2.00 hot meal during shift | three 10-minute breaks<br>(May be combined with meal period) |
| **Does not include travel time |  |  |

#### **14.03. Pay for Meals Not Furnished.**

If an employee is required by the Employer to work through a shift without being given a meal period as required under Section 14.02, the employee shall be paid time and one-half (1 1/2x) the employee's straight-time hourly rate for the period.

### **ARTICLE 15: BREAK PERIODS AND ABSENCE FROM WORK**

#### **15.01. Call-In Policy.**

The Company agrees to maintain its current attendance and tardiness policies on call-ins for the duration of this Agreement.

### **ARTICLE 16: SPECIAL EVENTS/MISCELLANEOUS**

#### **16.01. Union Buttons.**

One (1) official Union button, no larger than two inches (2") in diameter, may be worn on the job at all times until a mutually agreed upon button is finalized between the Employer and the Union.

#### **16.02. New Equipment Introduction.**

Whenever the Employer proposes the introduction of new equipment which may significantly and substantially affect the terms and conditions of work or the wages of employees in a classification covered by this Agreement, the Employer shall advise the Union in writing sufficiently in advance of the proposed date of introduction of such equipment to enable the Union, if it so desires, to discuss with the Employer the possible significant and substantial effects of the introduction of such equipment upon the employees in classifications covered by this Agreement. Upon request



by the Union, the Employer will meet with it for the purpose of discussing the possible effects of the introduction of such equipment on such employees. The Employer will not introduce any such new equipment until it has afforded the Union a reasonable opportunity to discuss with the Employer all aspects of the possible significant and substantial effects upon such employees.

**16.03. Uniforms.**

All uniforms and/or accessories distinctive by style, coloring or material required by the Employer to be worn by employees on the job shall be furnished and maintained by the Employer at no charge to the employee. The Employer shall make available a sufficient supply and variety of sizes of uniforms so that all employees will have clean and properly-fitting uniforms at all times. Alterations to uniforms may only be made by the Employer. Employees shall treat such clothing carefully and with respect so as not to unnecessarily damage or destroy it. If an employee intentionally damages a uniform, that employee shall bear the cost of replacement of said uniform. If an employee is terminated or otherwise leaves his employment, the employee shall return all such clothing to the Employer in good condition, reasonable wear and tear excepted; and if the employee fails to do either, the Employer shall deduct the cost thereof from the employee's final paycheck.

**16.04. Rotation of Stations.**

The Company will continue its current policy of equitable rotation of stations for the duration of this Agreement.

**16.05. Health/Safety Regulations.**

All Health Department and Safety regulations will be followed in accordance with law and specific departmental rules.

**16.06. Union Notices.**

The Employer shall furnish the Union with a bulletin board, to be located near the time clocks, for the purpose of posting Union information. All materials must be reviewed and approved prior to posting by Human Resources. The Company will not unreasonably withhold approval.

**16.07. Change.**

The Employer may assign Bartenders to make change on those bars having poker machines, and the Employer may establish reasonable rules to govern the handling of change banks.

**16.08. Construction.**

Employees in the affected area shall be given at least two (2) weeks advance notice of construction, except in emergencies, which may affect the employees' schedules, provided the Employer was aware of the construction sufficiently in advance to give such notice.

**16.09. Health and Safety Committee.**

The Employer, the Union and the employees agree to use existing practices with respect to Safety Committees/Safety Inspector.

**16.10. Customary Work.**

Both the Union and the Employer agree that providing guests with excellent service is the primary objective of all employees. Employees shall normally perform the work customarily performed by their job classification. Sweeping, mopping, or general porter work shall be the duty of the

Porters or Kitchen miscellaneous employees. Any employee may be required to conduct light cleaning in their areas, including clean-up of accidental spillage or breakage in the room or area to which they are assigned.

Notwithstanding anything here to the contrary, employees may be required to do work outside his/her station on an occasional basis as is reasonably connected with or incidental to the proper and orderly conduct of operations within the property so long as the employee is not adversely affected financially, except in the event of an emergency. In addition, an employee may be required to do work outside his/her classification on a limited basis when business needs demand and, in such cases, shall be paid pursuant to Section 5.09.

Non-bargaining unit employees may perform bargaining unit work on a limited basis where business needs demand; provided, that such use of non-bargaining unit employees does not lead to the loss of bargaining unit employee hours and provided that for banquets the provisions of Section 19.20 are followed. Such use of non-bargaining unit employees must be occasional and not regular.

#### **16.11. Payments of Special Events Gratuities.**

Gratuities for special events shall be paid to employees who provide service not later than the payday for the payroll period in which such service was rendered. At such time, the Employer shall make available to the Union the names and dates of the special event groups and the names of employees and amount of gratuities received by them on their paychecks for the pay period involved, with the gratuities broken down by source.

#### **16.12. 401(k) Plan.**

(a) Members of the bargaining unit may participate in the Employer-sponsored 401(k) plan. Beginning January 1, 2018, the Employer shall provide the same 401(k) matching contribution for its bargaining unit members represented by the Union as it does for its employees outside of the bargaining units, which is a 25% percent match up to the IRS annual limit.

(b) With respect to the 401(k), the Employer has the right to change or eliminate the terms or conditions under which the benefit is provided, including without limitation, the nature and type of benefits provided, the continuation, modification or imposition of required employee's contributions to any such plan, the provider, the carrier or other business entity through which any such plan is made available to employees, the elimination of any such plan, or the implementation of a new or different plan. The Employer shall provide notice to the Union of any such change and the opportunity to bargain. Any such change must be applicable to all other employees covered by the 401(k).

#### **16.13. Room Service.**

(a) There will be a sixteen percent (16%) gratuity on all room service deliveries and a \$4.00 flat rate for non-PPE items/amenities delivered.

(b) There will be an eighteen percent (18%) gratuity on reception suites.

**16.14. Employee Parking.**

(a) The Employer will provide free and secure employee parking. The Employer will provide roaming security in the parking lot 24 hours a day. The Employer will add additional security cameras to the employee parking lot. The Employer and the Union shall have a quarterly meeting to discuss security issues.

(b) The Employer will match dollar for dollar any contributions made by the Union to increase security in the employee parking lot in addition to what is set forth above.

**16.15. Training Differential.**

Bargaining Unit employees who train other employees shall receive an additional \$1.00 per hour for time spent training.

**16.16. ServerTainer.**

(a) ServerTainers shall be provided with adequate space on Resort Property to practice dances which include mirrors and a working sound system. Mandatory training shall be compensated by the Employer.

(b) The Employer shall post opportunities for employees to train to become ServerTainers.

**16.17. Tip Pools.**

The Employer shall not mandate tip pooling in any outlet or on the casino floor.

**16.18. Other Employment.**

Except as otherwise provided in this paragraph, employees are not allowed to work another job while on leave from the Employer, including self-employment, without approval by the Employer. Employees are not permitted to work another job during the hours of their regular schedule with the Employer. An employee will be considered terminated on the day he/she begins new/concurrent employment in violation of this paragraph.

Employees may, however, work for another employer outside the hours when they are scheduled to work for the Employer, if the second employment does not interfere with and adversely affect the employees' duties for the Employer. Additionally, employees who are on FMLA leave may hold other jobs to the extent these jobs are not inconsistent with the reasons for which the employee sought FMLA leave. Finally, when employees are granted leave for to conduct Union business or participate in Union meetings, their activities on behalf of the Union shall be deemed to have been approved by the Employer for purposes of this paragraph.

**16.19. Immigration.**

In the event that a post-introductory employee has a problem with his or her right to work in the United States, the Employer shall notify the Union a reasonable time after the problem is known. Upon the Union's request, the Employer shall meet with the Union to discuss the nature of the problem to see if a resolution can be reached. However, the Employer may take any appropriate action before conducting the meeting.

A post-introductory employee who is not authorized to work in the United States and whose employment has been terminated for this reason shall be reinstated to his or her former



classification without loss of prior seniority if the employee produces proper work authorization within twelve (12) months of the date of termination and shows, to the Employers satisfaction, that the employee lost his or her work authorization through no fault of the employee.

Employees do not accrue vacation or other benefits based upon particular plan policies during such loss of employment. In such a case, where the employee lost his/her employment through no fault of the employee, the Employer will rehire the employee into the next available opening in the employee's former classification, without loss of seniority, upon the former employee's providing proper work authorization within a maximum of twelve (12) months from the date of termination.

This new immigration policy is in no way intended to alter the interpretation or application of other applicable Employer policies (e.g., the obligation to provide proof of an employee's legal right to work in the United States, falsification of company records, etc.). These policies shall remain in full force and effect (as they may vary from time to time), and the Employer reserves every right to take action (up to and including employment termination) for violation of these policies.

#### **16.20. New Classifications.**

The Employer may implement a new classification, in Grand Cafe and elsewhere, which will be expediter/runner/backserver. The Employer will have the discretion to eliminate the position if practice shows that the position does not add the contemplated value. The position will be paid the equivalent of the pay for front servers at Charlie Palmer--\$7.45 or \$8.45, depending on which tier minimum wage applies. Additionally, the Employer may add a wine runner, who will be a Union member and will be compensated at \$8.50 per hour. The Employer expects to hire the employee on a part-time basis, but will have the discretion to vary the employee's schedule from part time to full time as business needs require.

#### **16.21. Snack Cart and Beverage Stations.**

The Employer may implement a cart serving Danish, snacks, and hot beverages on the casino floor for 2 to 3 hours in the morning and 2 to 3 hours in the afternoon. The cart will be serviced by non-union employees. The cart will not operate for more than 6 hours per day.

The Employer may also implement 3 to 5 self-serve non-alcoholic beverage stations at select locations on the casino floor. The stations will be available 24 hours per day, 7 days per week and will be stocked and cleaned by Union employee(s). The Employer has the discretion to determine the locations of these stations.

#### **16.22. Bartender and Cocktail Server Work Rules.**

The work rules attached hereto as Exhibit 5 shall apply to all Banquet Bartenders and Banquet Cocktail Servers.

### **ARTICLE 17: SENIORITY**

#### **17.01. Probation Period.**

An employee will be considered as a probationary employee for the first three (3) months of employment from his/her most recent date of hire by the Employer, which may be extended for an additional three (3) months by mutual agreement. A probationary employee may be terminated at the discretion of the Employer, and such termination shall not be subject to the grievance and arbitration provisions in Article 18.



#### **17.02. Definition of Seniority.**

House seniority is an employee's length of continuous service in years, months and days from his most recent date of hire by the Employer. Classification seniority is the employee's length of continuous service in years, months and days from his most recent date of hire or transfer, at a particular establishment covered by this Agreement, into his present job classification with the Employer. Transfers from one department to another or from one restaurant to another (Food Servers, Bus Persons and Food Runners only) shall constitute a change in job classification.

#### **17.03. Layoff and Recall.**

In the event of layoffs due to a reduction in force, probationary, Part-Time and extra within the affected classification(s) will be the first to be laid off. Employees will be laid off from and recalled to their regular job classification in accordance with their house seniority, provided they have the qualifications to perform satisfactorily the work available in their regular job classification. Employees have the initial obligation to provide the Employer with correct contact information. At the time an employee is laid off, the Employer shall ascertain the current address and telephone number of the employee.

Subsequent to that time, it is the responsibility of the employee to advise the Employer of a change in either address or telephone number. In order to maximize work opportunities for an employees, the Employer, during times of layoff/recall, may utilize the following method of reductions:

1. volunteer days off
2. volunteer early outs
3. reduce work equally where currently practiced or by house seniority where done by length of service

These options are purely optional and can be used by any department or group in any order, or can be skipped altogether and a layoff can be effectuated. Before implementing any of these three options, the Employer shall meet with the affected employees and use best efforts, as determined by the context of the situation, to reach an agreement with the employees. If the Employer and the employees are unable to reach an agreement, the Employer may implement any of the three options set forth above, at its discretion. The requirement that the Employer meet with the affected employees does not apply to situations when the Employer decides to conduct a layoff.

In accordance with their house seniority, regular employees in layoff status will be offered but not required to perform, all extra work in their classifications except for banquets or parties, before probationary employees are hired; provided, however, that such employees who have not completed their probationary period who are offered and accept extra work shall be paid as extra employees for such work.

#### **17.04. Promotions and Preference for Shifts.**

(a) Promotions. When the Employer promotes an employee to another covered classification, the Employer will consider the employee's house seniority, qualifications to perform satisfactorily the work in the other classification, and prior performance. Where qualifications to perform the work and prior performance in the other covered classification are relatively equal among employees, the senior employee shall be the one promoted. For purposes of this paragraph (a) and

Section 2.01(a), a "promotion" shall be deemed to be a transfer to another covered classification in which the transferred employee has an opportunity for increased compensation or for subsequent job progression as a result of the transfer. An employee promoted under this Section who cannot perform satisfactorily the work of the job to which he or she was promoted, may be transferred back to his/her former job, within thirty (30) shifts after the date of the promotion. If the employee's former shift and station are no longer available, the employee shall be entitled to displace the least senior employee in the former classification. Permanent vacancies to be filled by promotion under this paragraph shall be posted for seventy-two (72) hours near the employee time clock or other locations to which employees have regular access. The Employer may fill the vacancy temporarily during the posting period.

(b) Preference for Shifts. When there is a permanent vacancy on a particular shift or schedule, or in the case of temporary summer shifts, employees in the same job classification on other shifts or schedules who desire to transfer to the vacancy will be transferred on the basis of their classification seniority, provided that the senior employee desiring transfer is qualified to perform satisfactorily the work on the shift and/or schedule applied for and that a qualified employee is available to replace the employee desiring the transfer. An employee transferred under this Section shall assume the weekly and daily shift schedule, days of work and days off applicable to the vacant position to which transferred. The resulting vacancy or vacancies created by a transfer under this Section shall be filled by the next senior qualified employee(s) from another shift and/or schedule who desires to work on a shift or schedule where the vacancy exists. All employees in bargaining unit classifications on the date this Agreement is effective will retain their current seniority date for classification purposes. In the event that employee shifts overlap resulting in a division of a work area, the manner in which the area is divided will be determined by the Employer, and the employee with the most classification seniority will have first preference of work area. Permanent vacancies under this Section shall be posted for minimum of seventy-two (72) hours and up to five (5) days, depending upon the reduction of the workforce in a department. The vacancies shall be posted where employee notices are normally posted. The Employer may fill the vacancy temporarily during the posted period.

#### **17.05. Extra Work.**

At the time of layoff, the employee shall state availability or non-availability for work.

#### **17.06. Break in Continuous Service and Seniority.**

An employee's continuous service, seniority and status as an employee will be broken down when:

- (a) he/she quits;
- (b) he/she is discharged for just cause;
- (c) he/she is absent exceeding the period of an authorized leave of absence;
- (d) he/she is absent due to injury or illness sustained during the course of employment, exceeding the period for which statutory, temporary, total disability payments are payable under the Nevada Industrial Insurance Act, provided that the employee shall have one (1) week after his/her release by an Employer's approved and qualified physician in which to return to work; or

(e) he/she is absent because of layoff exceeding six (6) months if he had less than six (6) months of active employment when the layoff began, or absent because of layoff exceeding twelve (12) months if he/she had six (6) months of active employment when the layoff began.

#### **17.07. Notification.**

An employee who is to be recalled to work by the Employer under Section 17.03 shall be notified to return to work by the Employer advising the employee by telephone, certified mail, return receipt requested, or other available means of communication of the date and the time employee is to report; and by confirming such communication by certified mail, return receipt requested, to the employee's current address of record on file with the Employer. Employees are initially responsible for providing the Employer with correct contact information and have the obligation to continue to provide the Employer with a current and correct phone number during the period in which they are subject to recall, so that the Employer can contact them immediately for any applicable recall position. A copy of the confirmation letter shall be sent to the Union. Reasonable advance notice must be given to an employee being recalled. If such employee fails to report to work within forty-eight (48) hours after the time specified for the employee to report, his seniority and continuous service shall be terminated, and the Employer shall be free to hire a replacement in accordance with Article 2 of this Agreement.

#### **17.08. Bartender Promotion.**

The Employer and the Union will review, study and jointly work on the establishment of a mutually-agreed upon Bartender certification course and test, which will allow for a job ladder progression. First priority for the course study shall be current eligible Bar Persons. All new hires or transferees applying for a Bartender position shall pass the test before being deemed qualified.

### **ARTICLE 18: GRIEVANCES AND ARBITRATION**

#### **18.01. Definition.**

For purposes of this Agreement, a grievance is a dispute or difference of opinion between the Union and the Employer involving the meaning, interpretation of and application to employees covered by this Agreement, or alleged violation of any provision of this Agreement.

#### **18.02. Time Limit for Filing Grievances.**

(a) No grievance shall be entertained or processed unless it is received in writing by either party within fifteen (15) workdays after occurrence of the event giving rise to the grievance or after the aggrieved party hereto acquires knowledge of the occurrence of such event, whichever is later. The written grievance shall set forth the provision(s) of this Agreement alleged to have been violated, and every effort will be made to set forth all the known facts allegedly constituting the violation.

(b) As used in this Article, the term "workdays" means from Monday through Friday, inclusive, but excluding any legally recognized federal and state holiday.

#### **18.03. Procedure for Adjusting Grievances.**

All grievances shall be adjusted exclusively in the following manners:

1. It is mutually agreed between the parties that the speedy resolution of grievances is in the best interests of the employees and the Employer. For that reason, the parties have created the



following grievance procedure which encourages the employee to first talk to his/her supervisor when questions, problems, complaints or disputes arise, and encourages the resolution of grievances at the lowest possible levels and provides for a quick and fair resolution of problems and disputes.

The employee may, within three (3) working days of the incident or circumstance giving rise to the dispute, take the matter up with his/her immediate supervisor. The employee has the full right to and involvement of the Shop Steward in this step. Settlements reached at this level shall be considered non-precedential, unless the Employer and the Union Representative agree that the settlement shall be reduced to writing and may be used as a precedent in the future.

The supervisor involved in the Step I meeting shall respond within three (3) days of the Step I meeting. While this step is encouraged, it is not required.

2. SECOND STEP-GRIEVANCE MEETING. The parties shall meet to discuss the grievance within ten (10) workdays from the filing thereof. For the purpose of attempting to resolve the grievance prior to arbitration, the parties, at this meeting, shall make full disclosure to each other of all facts and evidence then known to them which bear on the grievance, including interviews with all witnesses. If such interviews cannot be scheduled for the Second Step- Grievance Meeting, they shall be conducted prior to or during the Third Step-Board of Adjustment.

3. BOARD OF ADJUSTMENT. Any unresolved grievance shall be reduced to writing and scheduled for hearing by a Board of Adjustment within 15 calendar days of the filing of the grievance. The Board of Adjustment shall be comprised of not more than two (2) representatives of the Employer and two (2) representatives of the Union. For the purpose of attempting to resolve grievances prior to arbitration, the parties, at any meeting prior to the Board of Adjustment hearing and at that hearing, shall make full disclosure to each other of all facts and evidence then known to them which bear on the grievance. A decision concurred in by a majority of the members of the Board shall be considered final and binding on all parties. If a majority cannot agree to a decision, the company shall give its decision on the grievance within five (5) work days after the Board meets.

4. ARBITRATION. If the parties are unable to resolve the grievance during the Board of Adjustment, either party may, within seven (7) calendar days after the company issues its decision on the grievance (which decision shall be issued within 5 work days after the Board of Adjustment meeting), submit written demand to the other party requesting that the grievance be submitted to arbitration. Such written request for arbitration shall specify the issue(s) and provision(s) of the Agreement alleged to be involved, the name of the aggrieved employee(s) or party, the events giving rise to the grievance and the relief requested. Unless the time requirements are met, the grievance shall be considered waived or abandoned and no further action may be taken on such grievance.

In the event the parties are unable to agree upon an arbitrator within ten (10) days of the appeal to arbitration, the arbitrator shall be chosen by lot from a ten (10) member panel (to be decided upon following the signing of this Agreement), except that either party may strike one (1) arbitrator from the panel for a particular arbitration before drawing by lot. On each anniversary date of the Agreement, either party may strike up to three (3) members of the panel. The parties shall attempt

to agree upon replacement members of the panel, but in the event they cannot reach agreement, the required replacements shall be selected through an alternate striking procedure from the Federal Mediation and Conciliation Service arbitration panel. No arbitrator shall be chosen to serve in two (2) consecutive arbitrations unless by mutual consent of the parties. The decision of any arbitrator shall be final and binding upon the parties. An arbitrator shall only have the power and authority to interpret and apply the provisions of this Agreement to the grievance presented, and his decision shall apply only to the issue arising out of the facts of such grievance. The arbitrator shall have no authority to alter, amend, modify, nullify, ignore or add to the provisions of the Agreement either by implication or otherwise. The costs and expense of arbitration shall be shared equally by the parties, except that each party shall bear the expense of its own witnesses and representation at the hearing. Alternatively, by mutual agreement, the parties may submit to an expedited arbitration utilizing an arbitrator selected from the system provided in this Section; however, the parties will not be represented by counsel, and bench decisions will be rendered. These cases will be non-precedent setting.

## **ARTICLE 19: BANQUETS**

### **19.01. Definition.**

A banquet shall be deemed to be any function which has been regarded as a banquet according to the custom and usage so the hotel-casino industry in Nevada, including receptions. Banquet Captains, Banquet Bartenders, Coffee Servers, Banquet Bar Runners, Banquet Cocktail Servers, and Banquet Food Servers are Banquet employees carried by the Employer on its regular payroll and are covered by all provisions of this Article. Seniority under Article 17 shall be for the purpose of layoff and recall only, and shall be applicable only as among the Employer's Banquet employees

### **19.02. Scheduling.**

- (a) Banquet Bartenders, Banquet Bar Helper, and Banquet Cocktail Servers will be scheduled by the Employer. Seniority will be taken into consideration when scheduling is done.
- (b) Offsite Catering functions shall be scheduled by the Employer.
- (c) Banquet Core List Servers shall be voluntarily scheduled among themselves for Roll-In Banquet functions before "A" list, Qualified In-House (scheduled for less than 30 hours for the week) and "B" List employees.

The Employer shall post the tracking list in a conspicuous area accessible to all Banquet employees.

### **19.03. Banquet Vacancies.**

When permanent vacancies for the Banquet Department must be filled, the Employer shall give preferential consideration to qualified In-House employees. The Employer shall consider qualifications and prior performance when making a decision.

### **19.04. On-Call Banquet Food Servers and Bartenders.**

- (a) The Employer may establish an "A" List, an In-House "A" list, a "B" List and an In-House "B" list for Banquet employees to be used only when staffing requirements exceed the Employer's regular Banquet staff.

(b) The Employer may determine the number of "A" List, In-House "A" List, "B" List and In-House "B" List Banquet Food Servers, Bartenders, and Cocktail Servers.

(c) Scheduling will be done by seniority and availability. The order will be "A" List, In-House "A" List, "B" List, and In-House "B" List.

#### **19.05. Meals for Banquet Employees.**

Meals for Banquet Employees shall be in accordance with the guidelines for all employees.

#### **19.06. Service Charge.**

On all banquets, excluding Total Event, the Employer shall pay the traditional service charge of eighty-five and one quarter percent (85 ¼%) of eighteen percent-(18%) of the total charges for food and beverage (except beverages served from a bar) to Food Servers and Captains who work the function, who shall receive equal shares of the service charge. The Employer shall pay a service charge of eighty-five and one quarter percent (85 ¼%) of eighteen percent (18%) of charges for all banquet bar functions, including hosted or cash, to the Bartenders who actually perform the work of preparing or delivering drinks. The service charge for banquet bar functions shall be separate from the service charges paid to other Banquet employees. All Banquet employees may keep any cash tips from customers. The Employer shall provide to Banquet employees, prior to or during the function, the menu, the number of guests, and the name of the group. If the service charge increases during the duration of this Agreement, the percentage formula shall remain the same.

The increase for banquet service charge from 16% to 18% will be split between employees and the employer. The employees will receive 20% of the increase with 50% of the 20% going to Banquet Servers and the other 50% going to the Convention Porters.

On In-House, Local and any event deemed as a "Special Function," gratuity will be fixed and set at \$75.00 per Bartender and \$150.00 per Food Server. The Employer shall have the right to increase these gratuity amounts based on the length and size of the event. The \$75.00 and \$150.00 limits shall apply to a maximum of 3 In-House, Local, or "Special Function" events per calendar year.

#### **19.07. Banquet Minimums.**

Banquet Captains, Food Servers, Bartenders, Banquet Bar Runners, and Cocktail Servers shall be paid for actual hours worked. A 2-hour minimum show up time will be paid if warranted.

#### **19.08. Setup and Breakdown.**

Banquet Captains, Food Servers, Bartenders, Banquet Bar Runners, and Cocktail Servers are responsible for all set-up and service to buffets, cooking stations and guests, as well as breakdown of same in banquet rooms.

#### **19.09. <sup>Full</sup> Full Function.**

No Banquet Captain eligible for gratuities shall share in the gratuities unless the employee works both set-up and service, or service and breakdown. No Banquet Food Server eligible for gratuities shall share in the gratuities unless the employee works a full function, including set-up and service; provided that, at banquets where clean-up work must be delayed until the conclusion of speeches



or a program, only the number of employees sufficient to perform the clean-up work need to be retained, and those employees not retained shall nevertheless share in the gratuities.

#### **19.20. Regular Employees Working Banquets.**

Where there is the need for additional banquet workers because no regular banquet employees are available for the extra work, the Employer may use regular employees in the classifications of food server, cocktail server, busperson and bartender to perform the duties pertinent to their respective classifications at banquet functions, provided they are paid the banquet wage rates for the parallel banquet classifications. Such banquet work will be offered to regular employees in descending order of house seniority within each classification. Such work is voluntary. Bargaining Unit employees in classifications other than those listed above who have at least one (1) year of prior banquet experience shall be considered for banquet work after all employees in listed classifications have been offered work. Such work is voluntary. If after the work has been offered as described above there remains a need for additional banquet workers, the Employer may then use non-bargaining unit employees to do the work. Regular employees who accept banquet work shall be returned to their regular classifications, shifts and stations on their next scheduled workdays following each banquet assignment.

### **ARTICLE 20: PROHIBITION OF STRIKES AND LOCKOUTS**

#### **20.01. Strikes.**

Both the Union and the Employer recognize the service nature of the hotel/casino business and the duty of the Employer to render continuous and hospitable service to the public in the way of lodging, food and other amenities and accommodations. The Union agrees that it will not call, engage in or sanction any strike, sympathy strike, work stoppage, slow down, picketing, sit-down, boycott, refusal to handle merchandise, or any other interference with the conduct of the Employer's business for any reason whatsoever, including organizational picketing. This shall include dealings by the Employer with non-union suppliers, deliverymen, organizations, or other employees not covered by the Agreement.

#### **20.02. Action By Union.**

Should any of the activities prohibited by this Article occur, the Union shall immediately:

- (a) Publicly disavow such action by the employees;
- (b) Advise the Employer in writing that such action by employees has not been called or sanctioned by the Union;
- (c) Notify employees of its disapproval of such action and instruct such employees to cease such action and return to work immediately. Should such employees refuse to follow the Union's direction to cease such activity and return to work within one (1) hour of receipt of such direction, the Union will allow the Employer to take disciplinary action against such employees; and
- (d) Provide notices to the Employer to post on the appropriate bulletin board advising that it disapproves such action, and instructing employees to return to work immediately.

**20.03. Lockout.**

The Employer agrees that, during the term of this Agreement, it shall not lock out any of the Employees in the defined bargaining unit.

**20.04. Action By Employer.**

The Employer shall have the right to maintain an action for damages resulting from the Union's violation of these provisions. Any claim by the Employer for damages resulting from any violation of this Article shall not be subject to the grievance and arbitration provisions of this Agreement. While disciplinary action taken against employees for violating this Article or any other provision of this Agreement is subject to the grievance clause hereof, the Employer is entitled to seek injunctive relief against any strike in violation of the Article pending the decision of an arbitrator. Grievances over disciplinary action taken against employees found to have violated this Article shall be limited to the issue of whether the employee in question actually engaged in the prohibited activity. If the Employer determines that an employee engaged in an activity prohibited under this Article, any disciplinary measures taken by the Employer against the employees must be left unmitigated.

**ARTICLE 21: MANAGEMENT RIGHTS AND RESPONSIBILITIES****21.01. Rights.**

It is agreed that the Employer alone shall have the authority to determine and direct the policies and method of operating the business without interference by the Union, except as otherwise expressly provided for or required by the Agreement. Except to the extent abridged, delegated, granted, limited or modified by specific provision of this Agreement, the Employer retains all of the following rights, powers and authorities that the Employer had prior to the signing of this Agreement, including but not limited to: the right to close its business or any part thereof; to discontinue or automate processes or operations; to determine the qualifications for new employees and to select its employees; to determine work schedules; to determine the number and type of equipment, material and supplies to be used; to hire, promote, transfer, assign in accordance with past practice; lay off and recall employees to work in accordance with this Agreement; to discipline employees for just cause (i.e., reprimand, suspend or discharge); to determine the assignment of work; to schedule the hours and days to be worked on each job and each shift; to discontinue, transfer, subcontract or assign all or any part of its business operations; to control and regulate or discontinue the use of supplies, equipment and other property owned or leased by the Employer; and otherwise generally to manage the business and direct the workforce. The Employer shall determine the size and composition of the workforce in all job classifications on all shifts. The Employer shall meet with a committee of employees in a particular department or restaurant before mass scheduling to obtain the employees views on how the Employer-determined jobs shall be scheduled. The Employer retains the right to make the final decision, but the employees' proposal will receive full consideration. Any grievance over whether the action of management is contrary to the terms of the Agreement may be taken upon Article 18.

**21.02. Rules and Posting.**

The Employer may establish and administer reasonable rules, regulations and procedures governing the conduct of employees, provided that such rules, regulations and procedures are not inconsistent with any provisions of the Agreement. The Employer shall make such rules available to employees and the Union upon request so that all employees affected thereby and Union





representatives may have an opportunity to become familiar with them. The Employer shall post and maintain any such rules in such places within its establishment so that all employees affected thereby and Union representatives may have an opportunity to become familiar with them. As business demands may dictate changes in company policies and procedures, the Employer will give the Union a 30-day notice of any applicable changes, unless circumstances render such notice impractical, in which case notice will be given as soon as practicable. The reasonableness of any rules, regulations and procedures provided herein is subject to the grievance procedures of this Agreement. The parties agree that all Hotel and Department Rules, policies, procedures and provisions of the Employer in effect at the time of the execution of this Agreement are accepted by the Union as effective and binding.

## **ARTICLE 22: COURT APPEARANCE AND JURY DUTY**

### **22.01. Court Appearance.**

Employees required to appear in court, administrative hearings, or at the police department on behalf of the Employer during their normal working hours shall receive their straight time rate of pay for hours lost from work, less witness fees received. If an employee appears in court, administrative hearings, or at the police department on behalf of the Employer on his days off or after normal working hours, he shall receive his straight time rate of pay for the hours spent in such appearances, less the witness fees received, but such time shall not be considered as time worked for any purposes under this Agreement.

### **22.02. Jury Duty.**

A Regular Full-Time or Part-Time employee who has completed thirty (30) continuous days of employment with the Employer and who is required to serve on a jury and loses work time because of such service shall be paid the difference between the jury fee received and his straight-time rate of pay for not more than eight (8) hours per day. This Section shall apply only with respect to an employee's regularly scheduled days of work and shall not be applicable with respect to days which the employee was not scheduled to work. Payment for such service hereunder shall be limited to not more than thirty (30) days in any calendar year. At the request of the Employer, the employee shall furnish satisfactory evidence of such service for which he claims payment hereunder. No employee, after having served on jury duty or having been required to stand by for same at the courthouse, shall be required to report for work prior to eight (8) hours after completion of his jury service, unless his jury service ended in time for him to report for a regularly-scheduled swing shift beginning no later than 4:00 p.m. and ending no later than 12:00 midnight. This Section shall not apply with respect to any jury summons received by an employee prior to his date of hire.

## **ARTICLE 23: SUCCESSIONSHIP AND SUBCONTRACTING**

### **23.01. Successors and Assigns.**

In the event that the Employer sells or assigns his business or in the event that there is a change in the form of ownership, the Employer shall give the Union reasonable advance notice thereof in writing and shall make all payments which are due or shall be due as the date of transfer of the business for wages for employees covered by this Agreement. In addition, the Employer shall be responsible for earned vacation payments for each employee covered by this Agreement.

The Employer further agrees that as a condition to any such sale, assignment or transfer of ownership, he will obtain from successors in interest a written assumption of this Agreement and furnish a copy thereof to the Union.

### **23.02. Subcontracting.**

It is recognized that the Employer and the Union have a common interest in protecting work opportunities for all employees covered by this Agreement and employed on a regular basis. Therefore, no work customarily performed by Union employees shall be performed under any sublease, subcontract, or other agreement unless the terms of any lease, contract or other agreement specifically state that (a) all such work shall be performed only by members of the bargaining unit covered by this Agreement, and (b) the Employer shall at all times hold and exercise full control of the terms and conditions of employment of all such employees pursuant to the terms of this Agreement. Any sublease, subcontract or other agreement for the performance of cleaning or janitorial services presently performed adequately by members of the bargaining unit shall first require the approval of the Union. Notwithstanding the foregoing provisions hereof, the Employer may purchase from outside sources for use in its establishment convenience foods, prepared frozen foods, pre-mixed salads and peeled vegetables.

Notwithstanding the foregoing, the Employer may lease space for up to eight (8) independently owned food and beverage operations, which currently includes (1) Johnny Rockets; (2) Rim; (3) California Pizza Kitchen; (4) Port of Subs; and (5) Yogurt Beach. This leaves the Employer with three more non-Union operations, for a total of eight operations.

- (a) Existing food and beverage outlets will continue in operations at substantially the same number of hours of operations subject to normal seasonal and weather changes.
- (b) No employee on the Employer's bargaining unit payroll as of the effective date of such leased restaurant operation will suffer a layoff or reduction in hours as a result of the leased operation.
- (c) The employer will notify the Union of its intention to lease space to a restaurant operator and the name and address of the operator within (i) 30 days before the lease is to commence; or (ii) what the contract with the vendor provides; or (iii) the amount of notice that is actually provided in the case of a lease termination. The Employer will provide the requisite notice to the Union within 7 days of the events contemplated in sections (ii) and (iii), whichever occurs sooner. With respect to replacing the departing vendors with new tenants, GSR will notify the Union of the particulars of the replacement tenant within 30 days after GSR and the replacement tenant enter into a valid and binding contract.
- (d) The leased food and beverage operation must be independent of the Employer. There shall be no room service or banquet functions of the Hotel serviced from the leased operation.
- (e) The Employer will arrange and participate in a meeting with the operator of the leased facility and the Union to determine whether the operator will sign a neutrality/card check agreement acceptable to the Union.

(f) If an unfair labor practices complaint is issued against the operator of the leased restaurant or its agents by the National Labor Relations Board, then Article 19 of this Agreement, Prohibition of Strikes and Lockouts, will not have any application to actions whose object is the leased food and beverage facility or its operator or employees.

(g) If the Employer's premises have a physical expansion exceeding fifty thousand (50,000) sq. ft. on the current footprint of the Hotel, the Employer may lease an additional two (2) food and beverage operations based on the same conditions in this Article.

### 23.03. Transfer and Sell.

In the event the Employer agrees to sell or assign its business or in the event there is a change in the form of ownership, the Employer shall give the Union notice thereof in writing within fifteen (15) days of the first non-refundable deposit made by the other party or parties to the transaction and shall set up a meeting between the prospective buyer and the Union.

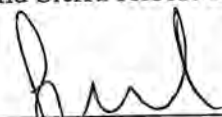
The Employer shall make all payments which are due or shall be due for wages for employees covered by this Agreement as of the date of transfer of the business. In addition, the Employer shall be responsible for earned unused vacation payments for each employee covered by this Agreement unless the buyer assumes such liability.

## ARTICLE 24: TERMINATION

The Agreement shall be in full force and effect for seven (7) years from November 1, 2016. Accordingly, the Agreement shall expire on October 31, 2023.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino


BY: 

ITS: Shannon Keel - GM

CULINARY WORKERS UNION,  
LOCAL 226

BY: 

ITS: President

BY: 

ITS: George Angelo Kline



# EXHIBIT 1

## Exhibit 1: Classifications & Wage Scales

| Classification                   | GSR<br>Rate<br>Min | GSR<br>Rate<br>Max | 11/1/<br>2018 | 11/1/<br>2019 | 11/1/<br>2020 | 11/1/<br>2021 | 11/1/<br>2022 |
|----------------------------------|--------------------|--------------------|---------------|---------------|---------------|---------------|---------------|
| Baker- Pastry Shop               | 12.00              | 17.50              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Banquet - Bar Helper             | 9.90               | 11.15              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Banquet - Bartender              | 7.45               | 8.95               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Banquet – Captain                | 8.05               | 9.05               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Banquet - Food Server            | 7.95               | 10.00              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Banquet - Lead Conv<br>Operation | 11.95              | 14.50              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Banquet - Lead Porter 10HR       | 11.70              | 13.50              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bar Helper - Crystal             | 7.70               | 11.00              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bar Helper – Main                | 7.70               | 11.00              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bar Helper – Crystal             | 10.20              | 11.50              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bar Helper – Main                | 10.20              | 11.50              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Barista                          | 11.75              | 11.75              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bartender - Cantina              | 7.45               | 8.95               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bartender – CP                   | 7.45               | 8.95               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bartender – Crystal              | 7.45               | 8.95               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bartender - Escalator            | 7.45               | 8.95               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bartender – Main                 | 7.45               | 8.95               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bartender - Showroom             | 7.45               | 8.95               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bell Desk - Dispatcher           | 10.20              | 10.20              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bell Person                      | 8.45               | 9.05               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Beverage Attendant Lead          | 15.00              | 15.75              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bus Person – Buffet              | 7.45               | 9.00               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bus Person – Café                | 7.45               | 9.00               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bus Person - Cantina             | 7.45               | 9.00               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Bus Person – CP                  | 7.45               | 9.00               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Butcher                          | 16.35              | 18.00              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Cake Decorator                   | 15.45              | 18.00              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Captain - Room Service           | 9.45               | 11.00              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Captain/Lead - Room<br>Service   | 12.00              | 13.50              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Cashier                          | 10.50              | 12.00              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Cocktail Server - Crystal        | 7.45               | 9.00               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Cocktail Server - Main           | 7.45               | 9.00               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Cocktail Server/Ent - Main       | 7.45               | 9.00               | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Cook – Helper                    | 10.75              | 13.00              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Cook I                           | 12.75              | 14.00              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |
| Cook II                          | 14.25              | 15.75              | 0.25          | 0.27          | 0.30          | 0.32          | 0.35          |



|                                      |       |       |      |      |      |      |      |
|--------------------------------------|-------|-------|------|------|------|------|------|
| EVS - Floor Technician               | 12.95 | 13.49 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| EVS Utility Porter                   | 11.00 | 12.60 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Runner – Café                   | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Runner – CP                     | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Runner - Room Service           | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Runner- Cantina                 | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Server - Buffet                 | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Server - Café                   | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Server - Cantina                | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Server - CP                     | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Server - Room Service           | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Server - Wine Bar               | 7.45  | 10.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Food Server/Trainer - CP             | 12.70 | 12.70 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Host - Food and Beverage             | 8.50  | 12.50 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Laundry Utility Porter               | 13.45 | 13.45 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Laundry Worker I                     | 10.50 | 12.50 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Laundry Worker II                    | 11.00 | 13.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Laundry Worker III                   | 12.00 | 13.50 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Lead Cashier                         | 10.75 | 12.50 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| QSR                                  | 11.50 | 12.75 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Saucier                              | 15.70 | 17.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Sommelier -CP                        | 18.74 | 19.50 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Stewarding- Dishwasher<br>Heavy      | 10.00 | 13.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Stewarding- Supervisor<br>Heavy      | 13.00 | 15.50 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |
| Stewarding- Utility Cleaner<br>Heavy | 11.00 | 14.00 | 0.25 | 0.27 | 0.30 | 0.32 | 0.35 |

## **EXHIBIT 2: CHECK-OFF AGREEMENT**

Pursuant to the Union Security provision of the Agreement between MEI-GSR HOLDINGS, LLC dba GRAND SIERRA RESORT AND CASINO (hereinafter referred to as the "Employer") and the CULINARY WORKERS UNION LOCAL 226 (hereinafter referred to as the "Union"), the Employer, during the term of the Agreement, agrees to deduct each month Union membership dues (including initiation fees, fines and assessments) from the pay of those employees who have authorized such deductions in writing as provided in this Check-Off Agreement. Such membership dues shall be limited to amount levied by the Union in accordance with its Constitution and Bylaws. Deductions shall be made only for those employees who voluntarily submit to the hotel employing them the original or a facsimile of a written authorization in accordance with the Authorization for Check-Off of Dues form set forth below. It is the Union's responsibility to provide the employees with this form.

On and after the date this Agreement is ratified by employees represented by the Union, the required authorization shall be in the following form:

### **PAYROLL DEDUCTION AUTHORIZATION**

Date \_\_\_\_\_

I, the undersigned, hereby request and voluntarily authorize the Employer to deduct from any wages or compensation due me, an amount equal to the regular monthly dues uniformly applicable to members of ("Union") in accordance with the Constitution and Bylaws of the Union.

This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice to both the Employer and the Union by registered mail during a period of fifteen (15) days immediately succeeding any yearly period subsequent to the date of this authorization or subsequent to the date of termination of the applicable contract between the Employer and the Union, whichever occurs sooner, and shall be automatically renewed as an irrevocable check-off from year to year unless revoked as hereinabove provided, irrespective of whether I am a Union member.

Signed \_\_\_\_\_  
Social Security No. \_\_\_\_\_

The Employer shall continue to honor authorization in the following form executed by employees prior to the date this Agreement is ratified by employees represented by the Union:

## PAYROLL DEDUCTION AUTHORIZATION

1. I, the undersigned, a member of \_\_\_\_\_, hereby request and voluntarily authorize the Employer to deduct from any wages or compensation due me, an amount equal to the regular monthly dues uniformly applicable to members of ("Union") in accordance with the Constitution and Bylaws of the Union.
2. This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending a written notice to both the Employer and \_\_\_\_\_, by registered mail during a period of fifteen (15) days immediately succeeding any yearly period subsequent to the date of this authorization or subsequent to the date of termination of the applicable contract between the Employer and the Union, whichever occurs sooner, and shall be automatically renewed as an irrevocable Check-Off from year to year unless revoked as herein above provided.
3. Deductions shall be made only in accordance with the provisions of said Authorization for Check-Off of Dues, together with the provisions of this Check-Off Agreement.
4. The original or a facsimile of a properly executed Authorization for Check-Off of Dues form for each employee for whom Union membership dues are to be deducted hereunder shall be delivered to the Employer before any payroll deductions are made. Deductions shall be made thereafter only under Authorization for Check-Off of Dues forms which have been properly executed and are in effect. Any Authorization for Check-Off of Dues which is incomplete or in error will be returned to the Union by the Employer.
5. Check-off deductions under all properly executed Authorization for Check-Off of Dues forms which have been delivered to the Employer on or before the fifteenth (15th) day of any particular month thereafter shall begin with the following calendar month.
6. Deductions shall be made in accordance with the provisions of this Check-Off of Union Membership Dues section, from the pay received on the first payday of each month regardless of the payroll period ending date represented on that payroll check. These provisions for dues deductions shall not apply to Banquet workers.
7. The Employer agrees to make deductions as otherwise provided in this Check-Off of Union Membership Dues section in the case of employees who have returned to work after authorized leave of absence.
8. In cases where a deduction is made which duplicates a payment already made to the Union by an employee, or where a deduction is not in conformity with the provisions of the Union Constitution and By-laws, refunds to the employee will be made by the Union.
9. The Employer shall remit each month to the designated financial officer of the Union, the amount of deductions made for that particular month, together with a list of employees and their Social Security numbers, for whom such deductions have been made. The information shall be in computer readable electronic form, in any one of the following media:



1. 3 ½" diskette in Formatted Text (Space Delimited) format or other electronic format, including thumb/jump drive, CD ROM in Formatted Text (Space Delimited), etc.

The report shall contain header information and be set up so that position "1" is the first position (not position 0). The positional formatting shall be as follows:

|                 |   |
|-----------------|---|
| Positions 1-13: | Social Security Number with the dashes  |
| Position 14-54: | Name and Last Name, First Name  |
| Position 55-60: | The dollar amount of the remittance without a dollar sign, Left justified, and with the minus sign in front for negative Amounts (such as -30.00) |

The remittance shall be forwarded to the above-designated financial officer not later than the twentieth (20th) of the month, for the deduction from the first paycheck (prior to the fifteenth 15th of the month) received by the employee for the month the dues are being paid.

10. Any employee whose seniority is broken by death, quit, discharge or layoff, or who is transferred to a position outside the scope of the bargaining unit, shall cease to be subject to check-off deductions beginning with the month immediately following that in which such death, quit, discharge, layoff, or transfer occurred.

11. In the event any employee shall register a complaint with the Employer alleging his/her dues are being improperly deducted, the Employer will make no further deductions of the employee's dues. Such dispute shall then be reviewed with the employee by a representative of the Union and a representative of the Employer.

12. The Employer shall not be liable to the Union by reason of the requirements of this Check-Off Agreement for the remittance of payment of any sum other than that constituting deduction made from employee wages earned.

13. The Union shall indemnify, defend and save the Employer harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Employer in reliance upon payroll deduction authorization cards submitted to the Employer.

### **EXHIBIT 3: POLITICAL ACTION COMMITTEE**

The Employer agrees to honor political contribution deduction authorization from its employees, in the following form:

I hereby authorize the Employer to deduct from my pay the sum of \$1.00 per month and to forward that amount to the Unite Here TIP Campaign Committee. This authorization is signed voluntarily and with the understanding that the Unite Here TIP Campaign Committee will use this money to make political contributions and expenditures in connection with Federal elections.

I am aware of my rights to refuse to sign this authorization without reprisal. This authorization may be revoked by mailing notices of revocation by United States Registered or Certified Mail, Return Receipt Requested, to the Unite Here TIP Campaign Committee at 275 Seventh Avenue, 11th Floor, New York, New York 10001 and to the Employer.

The political contribution shall be made once each month during which an employee who has performed compensated service as in effect a voluntarily executed political contribution deduction authorization. The money shall be remitted within thirty (30) days after the last day of the preceding month to the Unite Here TIP Campaign Committee at 275 Seventh Avenue, 11th Floor, New York, New York 10001, accompanied by a form stating the name and social security number of each employee for whom a deduction has been made, and the amount deducted.

The Union shall indemnify, defend and save the Employer harmless against any and all claims, demands, suits, or other terms of liability that shall arise out of or by reason of action by the Employer in reliance upon payroll deduction authorization cards submitted to the Employer.

Employees who revoke their authorization will not have a subsequent authorization honored by the Employer until the commencement of the following calendar quarter, at the earliest.

#### **EXHIBIT 4: BARTENDER AND COCKTAIL SERVER WORK RULES**

The following Agreement serves to define specific work rules for Bartenders and Cocktail Servers at the Grand Sierra Resort. All employees recognize management's rights and responsibilities under this Agreement. The Managers shall consistently apply the work rules on all shifts. Any policy contained in this Agreement deemed inconsistent with the Collective Bargaining Agreement shall be void. Any policy contained in this Agreement which is duplicated in the Collective Bargaining Agreement shall be applied as set forth in the Collective Bargaining Agreement. This Agreement is subject to be renegotiated if the two parties deem it necessary.

##### **BIDDING PROCESS:**

Any employee in a beverage classification may sign a posted bid. When vacancies occur in a bidded area, posting of the bid is based upon business needs and staffing levels. The Beverage Manager shall determine the timing for posting bids. Days off for vacant bids may change prior to posting.

A vacant bid will have the time and date stamped on the bid. The bid will be posted in the Beverage Department for seventy-two (72) hours. Bids are awarded to the employee with the most classification seniority who signed the bid, and meets the requirements as referenced in 17.04 of the Collective Bargaining Agreement.

A bid is considered awarded when the employee accepts and signs for the new bid. The employee will then have twenty four (24) hours in which to change their minds. At the end of the 24 hours, the thirty 30 day lock in period will begin. Management may then post their original bid. Classification seniority will begin at that time in the event of a change in job classification. When an employee declines a bid with their signature or initials, that will be binding and they will not be permitted to change their minds at a later time. If an employee wins a bid while on PTO days or LOA, the bid will be considered awarded when the bid is accepted with a signature, and the 24 hour rule will apply as stated above. The employee will begin the new bid as soon as possible but in no more than two weeks from the signing of the bid.

When a posted bid remains unsigned for seventy-two (72) hours, any employee still in the lock-in period may sign the bid before it is filled by a new hire.

If a qualified employee is on PTO days or on an approved LOA and desires to be informed of a posted bid, they must provide the Beverage Manager or designee with the employee's contact number. A reasonable effort will be made to contact the employee, and such attempt will be documented. The employee's name may be written on the bid sheet by Beverage Management or by the employee's designated representative.

When a posted bid is pulled and postponed or held by Management for longer than thirty (30) days, the bid will be reposted for seventy-two (72) hours before being made available for new hires.

## PROMOTIONS:

When a bartender bid is posted and not signed or accepted by a currently-employed Bartender, it should be awarded to qualified internal barbacks or servers before hiring external candidates. Barbacks and/or servers that have been trained and are dual-coded as Barback/Bartender or Server/Bartender will be awarded based on classification seniority ahead of untrained Barbacks or Servers.

Beverage Management will evaluate the employee's job performance within the first fifteen (15) shifts of their initial bid to determine the employee's job skills. If the Beverage Managers determine the employee's job performance to be below standard, the employee will be counseled re-evaluated and given fifteen (15) shifts to bring their performance up to standard. The employee may be transferred back to their former job within thirty (30) shifts after the date of the promotion. If the employee's former shift and station are no longer available, the procedures set forth in Article 17 will be followed. The above mentioned time frame may be extended with the approval of both Management and the Union.

## CHANGES IN BIDS:

If business needs deem it necessary to change days off or work areas assigned to a bid by forty percent (40%) or more for full-time or reserve employees, an employee may opt to vacate their bid and go on the reserve list. If the changed bid affects any other bidded shifts or schedules, a joint committee comprised of the Union Representatives, Shop Stewards, Committee Leaders and Beverage Management shall meet to determine the appropriateness of the changes. If the station is materially changed by forty percent (40%) or more, the affected employee(s) shall have the option of vacating the bid and going "open" with the same days off. Upon reopening of the original station the affected employee(s) shall be given the option of remaining open or returning to the original bid within ninety (90) days unless they have signed a new bid.

Full-Time employees working reserve due to the combining of stations will be considered bidded employees for the day and will maintain their seniority in the station they choose to work on that day. Any combining after commencement of the shift will be by seniority. Vacancies created by maternity, medical and personal leaves of absence shall be fitted on a daily basis by open reserve first, then on-call extras in order of classification seniority.

Written requests for temporary exchange of days off between employees will be considered for approval by Management on a case-by-case basis, but only when an extra day off cannot be granted to the person making the request. The days off being exchanged must be within the same pay week so that no overtime is involved. When exchanges are in effect, the employees involved will assume each other's seniority throughout the shift. If either employee does not fulfill the obligation to cover the exchanged shift, that employee will not be eligible for an exchange for the following three (3) months.

When an employee is moved from their bidded station to cover another area due to business needs, and their station is closed or combined, upon the reopening of the station, the employee will



be given the option of returning to their bidded station as long as a qualified replacement is available.

## BARTENDERS

### CLOSING OF STATION:

When slow business dictates a temporary/daily reduction in the number of Bartenders on the floor, the Primary Station will remain open taking into consideration cocktail service Bartenders hours and hours of the bar operation. Bars that do not have a designated Primary Station will be combined by seniority. The Bartender in the closed station may either take an early out or complete the shift if another Bartender in an open station requests an early out. When a station is closed for the shift, the Bartender in the closed station will be placed on the Open Reserve list.

### BARTENDER BREAK SCHEDULES:

Break schedules are a bidded schedule and any changes to the break schedule must be approved in advance, or during the shift by the Shift Manager, and the Manager must inform the Breaker. Break schedules must have a minimum of 3 breaks, or 2 breaks and an area to go into afterwards for the remainder of the shift. The Breaker must be able to run the full Break shift. This information will be made known to the Breaker prior to the daily selection of break schedules. Breakers will select their break schedules by seniority.

### OPEN RESERVE BARTENDERS:

Open Reserve Bartenders will pick their stations the day before by seniority. Once they have selected their station they will be considered bided to that station for the day. If it is the Bartenders day off on the day they are to pick, it will be the Bartenders responsibility to contact Management at 10 a.m. for Days, and 6:00 p.m. for Swing, if they have not already spoken with Management. If Management is not able to contact the Bartender within thirty (30) minutes after the above mentioned times, the Bartender will go to the bottom of the reserve list and will pick last. If the Bartender knows ahead of time that they are not going to be available at these times, they can give Management a list of their choices in descending order allowing Management to pick for them. Once Management contacts the Bartender, they will pass on all information of available stations and start times as well as any other information necessary to facilitate the Bartender in making their choice. The Bartender will make their choice immediately and will be locked in. If there is a sick call or a change in scheduling, the Open Reserve Bartenders in order of seniority will be given the option of staying with their original selection, or selecting the newly available station. In the event that a station with an earlier start time becomes available, and Management needs to fill it ASAP, Management will call, by seniority and go with the first available that they are able to contact. A message will be left by Management (answering machine, spouse, etc.) to verify the attempt to contact the employee. The employee will have ten (10) minutes to return the call before Management moves to the next on the list. It is the responsibility of the employee to provide Management with any alternate phone numbers.

### SICK CALLS:

All sick call coverage is handled in the following manner:

Open Reserve employees will be given the opportunity to fill the vacancy by seniority. Staffing and business may be at such levels that an additional employee is needed. The Shift Manager will make a reasonable effort to contact an employee on their designated day off provided overtime is not an issue. Calls will be made in descending order of seniority. If coverage cannot be obtained, the Shift Manager will commence calling employees by classification seniority without regard to overtime. The most senior employee who was called in to cover a sick call will have first consideration for an early out. If a forced early out is necessary in order to reduce labor costs the reduction will be done according to classification seniority.

An employee who calls in sick must call two (2) hours prior to the commencement of their scheduled shift. If an employee is unable to report for work they shall be personally responsible for notifying the Shift Manager in person on duty on ext. 2088 or on the individual manager's beeper, or company issued mobile telephone voicemail. If the employee is calling in close to the 2 hour deadline, and the Manager is not in the office, the employee will leave a message on the Beverage Office voicemail which notes the time of the call in the event that the employee is on hold waiting for the Shift Manager to answer the voicemail.

### EARLY OUTS:

Early Outs are based on seniority.

It is the responsibility of the employee to notify the Shift Manager at the beginning of their shift of any request of taking an early out. The Shift Manager may disseminate this information to any employee who should find that their station has been closed or combined or to the breakers who wish to work their full shift.

### EXTRA DAYS OFF/ PTO REQUESTS:

A request for extra offs may be utilized by calling two (2) hours prior to commencement of the shift. The Shift Manager will be available to receive calls either in the office or by mobile telephone PTO requests will be given priority over extra days off when submitted twenty-four (24) hours in advance.

In order to change shifts, Bartenders and Cocktail Servers must sign a vacated bid, with the following exception: in order to temporarily cover PTO days, extra days off and sick calls, a Bartender or Cocktail Server, by their own choice, may cover a shift provided that overtime is not created and provided that the minimum PTO days on their original shift are covered. If the minimum PTO days have already been provided on both shifts the employee must cover extra PTO days on their original shift. This exception shall apply only when all of the reserve or open bid employees on that shift have a station to work on that day. All reserve or open employees will pick their stations based on seniority.

If the company needs to reduce labor on the floor after the weeks schedule has been posted, management will make every effort to notify the affected employees at least three (3) hour before the start of the shift.

#### RE-BID:

In the case of an entire re-bid of cocktail servers or bartenders, if a bid is vacated the thirty (30)-day lock will not apply.

During a full re-bid of cocktail servers or bartenders, the full-time employees bid first, followed by part-time employees, then on-call employees. Bids shall be awarded based on classification seniority. If a vacancy remains after on-call employees have an opportunity to bid, then qualified employees in other classifications may sign bids. Note: "on-call" and "open-reserve" have the same meaning.

#### **ADDENDUM FOR COCKTAIL SERVERS**

This document serves to further define the work rules as they pertain to the Cocktail Servers. The goal is to maintain a set of rules that are consistent on each shift, and when working with each Manager. This addendum is intended to serve as an attachment to the Bartender and Cocktail Server Work Rules.

#### GENERAL RULES:

PIT AREAS: When the Pit is combined to reduce staff, the entire Pit will be combined by seniority.

When one Crap Game opens, it goes to the Senior Server. When a second game opens it will go to the next Senior Server. If two games open at the same time, or within fifteen minutes of the beginning of the shift, it will go AA/BB. When a third game opens, it will go to the Senior Server.

If only one (1) Cocktail Server has bid into a Pit area and an additional Cocktail Server is added due to an increase in business, the bidded Cocktail Server has the choice of the A or B sides of that Pit.

As more games open in the pit, the senior-bidded or only-bidded cocktail server divides the newly-opened games evenly among the pit cocktail servers. The craps table counts as two (2) games when the dividing occurs.

BREAKS: Break schedules will consist of a minimum of three breaks. Pit breaks will be provided by the Pit Breaker, unless there are not enough to fulfill the three break requirement. Upon completion of the breaks, the Server retains the right to either EO another Server, or to take, the EO themselves, unless needed due to business needs. In the event that the Breaker is needed to go to another area after the completion of the breaks, this information will be made known to the

Server prior to the selection of open areas. The Senior Breaker has first choice of station regardless of station.

ALL AREAS: To ensure that all areas of the Pits, Slots, Poker and Race remain equitable, especially after major changes or construction has occurred, the maps will be reviewed by a committee made up of Management, Shop Stewards and one or more Cocktail Servers in the affected areas whenever necessary.

When a Server is pulled from their bided area to cover another area due to business needs, once that Server is no longer needed in that area, the Server will return to their bided area as long as their bided area exists. If their bided area is closed they will go open. Management may 'uncombine' if business needs warrant.

OVERTIME: Overtime (OT) is awarded by seniority. A sign-up sheet will be maintained in the Beverage office on the bulletin board. Those willing to work OT on particular days will utilize this sign-up sheet. Management will assign and notify anyone who has signed up on the sign-up sheet of days needed for work.

#### DEFINITIONS:

Bidded: Someone who has signed a bid for a specific area such as one of the slots, pit, etc.

Open or Reserve: These Servers who have signed bids for their days off and shift only. These Cocktail Servers pick their areas to work on a daily basis based on their seniority.

Part Time: These Servers work in Part Time bids or are called in to cover busy times, PTO days, and extra offs.

The Order of selection will be Full-Time Servers in order of their classification seniority, Part-Time Servers in order of their classification seniority, and lastly On-call Servers in order of their classification seniority. Full-Time, Part-Time and On-Call Cocktail Servers shall be called to work before shifts are given to J-1 employees.



## **MEMORANDUM OF AGREEMENT: BANQUET CAPTAINS**

### **Definitions**

Coffee functions are defined as coffee breaks, continentals with no table set-up, continentals with table set up for less than three hundred (300) guests, beverage and snack-only breaks, working lunches, snack bars, bag lunches for less than five hundred (500) guests, and roll-in receptions.

Total Event Catering is defined as all off-property Food and Beverage functions not sponsored by the Employer.

Captain is defined as a supervisor to Banquet Servers.

Servers are defined as employees not hired by the Banquet Department as Captains or Scrub Captains.

### **Captain Scheduling**

The Banquet Managers will be responsible for scheduling Captains for banquet functions.

Banquet Captains are scheduled for food functions before all other personnel, excluding Coffee functions and Total Event functions. Captains are scheduled by Banquet Captain seniority, with the most senior Captain scheduled for one (1) function per day first. Captains are scheduled up to two (2) shifts each day (doubles). Scrub Captains are scheduled after Captains and before Core List Food Servers.

It is the Banquet Manager's responsibility to designate which Captains are the Lead Captains. The Lead Captains will be rotated on an equitable basis depending on availability of Captains that day. All Lead Captains scheduled by management will receive 1.5 shares of the gratuity. The number of Lead Captains will be determined by the Standard Count Table of this Memorandum of Agreement.

All other Captains will be scheduled by management to control excessive hours worked by a Captain to provide coverage for understaffed events or, if neither are necessary, to maximize contributions to the Captain's pool.

All Captains not scheduled as Lead Captains by management will be signed up in Core or Server slots and will receive 1.0 share of the gratuity. Captains retain the responsibility of their job position whether working as a Lead Captain or a Food Server.

### **Work Distribution**

The Banquet Managers will determine how many Captains are necessary for the day and will schedule Captains unless a Captain has asked for one-half (1/2) day off. If there are not enough Captain or Server slots to work all Captains that day, Captains will be scheduled by job position seniority.

Each food function must have supervising Captains. If possible, all Captains available will be scheduled for at least one (1) shift per day. All available Captains will be scheduled for two (2) functions per day before Core or Servers are scheduled.

Banquet Managers will be solely responsible for scheduling Captains-in-training (Scrub Captains) to enhance development.

Some Captains may not be booked for the day.

Captains will not be signed up for less than two (2) functions per day unless:

- they write the day off on the scheduling calendar;
- they sign up for one-half (1/2) day off on the scheduling calendar;
- the Banquet Manager determines that one (1) party to which a Captain has been assigned will require the maximum amount of work an employee is able to do in one (1) twelve (12)-hour day;
- there are not enough functions to schedule the Captains for two (2) functions per day, in which event, the most senior Captain is given first chance to have one (1) shift for the day.

Captains who not able to fill their schedule of two (2) functions per day in Captain assignments per "Standards per Function" will fill their schedule in Core or Server assignments.

After being scheduled for a shift, a Captain can request to be cancelled on that shift if management feels there is sufficient coverage and ample opportunity to replace that Captain. All other rules apply to this change. Captains may exchange shifts with other Captains with management approval.

### **Pop-Up Functions**

In the event of a Pop-up function, the Captains will be scheduled by Banquet Managers. A Captain asked to work less than twenty-four (24) hours prior to the scheduled shift time may refuse the function the first time without going to one-half (1/2)-day gratuity.

If all Captains available have been asked to work, the least to most senior Captains available will be asked again and will then go to one-half (1/2)-day gratuity split if they cannot work. The Banquet Manager retains the right to insist the Captain work if no other Captain is available or if the Captain is the last to write his/her name off in the scheduling calendar.

### **Cancellations/Count Drops**

In the event of cancellations or count drops, Captains will be moved to other functions that day, least senior to senior, displacing any employee except another scheduled Captain. If Captains choose not to displace a Server, they will be subject to the one-half (1/2)-day rules stated below.

If there are no Servers working and the count drops, the early out rules set forth below will apply. If a function cancels and no Servers are working, Captains will have the shift off.

### **Days Off**

Banquet Captains may request days off for the following week commencing on Sunday by writing their requests on the Banquet Managers calendar prior to Wednesday of the preceding week. Captains may also request up to two (2) one-half (1/2) days off per pay period. Captains will be

allowed only additional one-half (1/2) days off with permission from the Captain- scheduling Banquet Manager. Banquet Managers may deny all requests if business warrants.

### **Gratuity Pooling**

All Captain gratuities, whether or not the Captain is designated as a Captain or a Server for the shift, go into the Captain's gratuity pool for the day. Client Gratuities above the contractual amount which are added to the check or left post-function are split only among the Captains who work that function. Gratuities specified by the client to go to an individual Captain are not included in the split.

Employees hired as Banquet Captains will pool gratuities which will be on a twenty- four (24)-hour basis (defined as call-in times started after midnight to call-in times before midnight) among Captains who worked that day. Scrub Captains will be considered Captains for gratuity purposes. All Captains' shares of a function gratuity will go into the Captain pool. A Captain will receive a full share of that gratuity pool for the days worked if available to work any shift.

A Captain will be paid only one-half (1/2) the tip for the day, with the remaining one-half (1/2) going into the Captain gratuity pool to be divided equally among the Captain, if:

1. the Captain calls in or cancels a scheduled shift for any reason; or
2. the Captain requests one-half (1/2) day off, resulting in the Captain working only one (1) shift for the day and there is more than one (1) Captain working that day. Captains on the Captain's rate-per-hour shift will receive a full share of the gratuity if they work another function that day contributing to the gratuity pool. If they do not work to contribute to the pool, they will not receive a share of the gratuity pool for the day.

### **Multiple Function Pooling**

If a Captain is in charge of more than one (1) concurrent function, those functions' gratuities will be pooled together. The functions will be posted for scheduling as pooled functions. The Captain gets 1.5 share gratuity of the pooled total.

### **Early/Late Captains**

One Captain appointed by the Banquet Manager will review the schedule and adjust Captains for opening and closing using the following guidelines:

- Lead Captain will always open. The schedule will be checked so that Captains on breakfast the next day will not close. Captains on singles for the day will arrive at the scheduled time and close the function. If an individual function lasts over six (6) hours and two (2) or more Captains are scheduled on singles, the Captains may split the shift.
- Closing Captains will arrive no later than one (1) hour prior to the meal service.
- If all Captains are on doubles, the closing Captains will be assigned least senior to most senior, excluding the Lead Captain. Only the necessary number of Captains will remain to close.
- The closing Captains will be released from the luncheon function early, if possible.

- There will be one (1) closing Captain per forty (40) Servers.
- The schedule will be re-checked each day to adjust for management changes to the schedule.
- Efforts will be made to adjust the schedule to equal out hours for the day, on the assumption that the Lead Captain will clock in one (1) hour prior to a large party.
- Captains scheduled as Servers will be included in the early/late rotation.

### Miscellaneous

Captains may clock in early with pay to prepare for upcoming functions. Captains may request volunteers among the Serving crew to come in early for functions. Mandatory time changes for Servers will be handled solely by Banquet Managers. Monetary designations have been used to determine the counts set forth below because they regularly denote VIP status of menus, guaranteeing superior service for those functions. Management has the right to adjust scheduling to control excessive hours worked by a Captain or to provide coverage for understaffed events.

### Standard Count Table For Maximum Captains Plus Servers Per Function

Standard Servers and Captains working a function, excluding training sessions for individual Servers at training wage, with no gratuity. Captains will be scheduled to oversee each function according to the following table. The following are maximum counts:

| Buffet and sit down meal function | *Menu cost per meal non-inclusive | **Servers per set count | Lead Captains per set count if available |
|-----------------------------------|-----------------------------------|-------------------------|--|
| Continental                       | Standard retail                   | 1/40                    | 1/1000                                   |
| Breakfast 1                       | Over \$24.99                      | 1/22                    | 1/300                                    |
| Breakfast 2                       | Under \$25.00                     | 1/25                    | 1/600                                    |
| Lunch 1                           | Over \$29.99                      | 1/22                    | 1/300                                    |
| Lunch 2                           | Under \$30.00                     | 1/25                    | 1/600                                    |
| Dinner 1                          | Over \$49.99                      | 1/16                    | 1/100                                    |
| Dinner 2                          | Under \$50.00                     | 1/20                    | 1/600                                    |

Reception counts include all Captains in Server-per-guest count.

| Reception   | Menu cost per guest non-inclusive | Number of Servers per guest by guarantee     | Lead Captains per guest by guarantee               |
|-------------|-----------------------------------|--|--|
| Reception 1 | \$100.00 or more                  | 1/25   | 1/100  |
| 2           | \$50.00 — 99.99                   | 1/50   | 1/300  |
| 3           | \$5.00 — 49.99                    | 1/80   | 1/600  |
| 4           | \$0.00 — 499                      | Server \$ 12.00/hour<br>Count per management | 1/1000 All Captains signed up receive \$15.00/hour |



| Reception                   | Menu cost per guest non-inclusive | Number of Servers per guest by guarantee | Lead Captains per guest by guarantee |
|-----------------------------|-----------------------------------|--|--------------------------------------|
| Bag lunches over 500 guests | Standard retail                   | 1/80                                     | 1/800                                |
| Bar only events             |                                   | Server \$ 12.00/hour                     | No Captain                           |

\* In the event of special reduced prices, gratuity will be based on standard retail prices and, therefore, will be staffed according to retail. Costs not to include liquor. Per meal indicates amount of meals guaranteed by client on Banquet event order.

\*\* Set count for scheduling purposes not to exceed five percent (5%) of guarantee.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino

CULINARY WORKERS UNION,  
LOCAL 226

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

## MEMORANDUM OF AGREEMENT BANQUET FOOD SERVERS: WORK RULES

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2018, by and between MEI-GSR HOLDINGS, LLC dba GRAND SIERRA RESORT (hereinafter referred to as "Employer") and the CULINARY WORKERS UNION LOCAL 226 (hereinafter referred to as "Union"), and attached to and made a part of the Collective Bargaining Agreement.

1. The Banquet Food Servers Core List will be comprised of up to fifteen (15) employees.
2. Scheduling will be done in order of seniority, first from the Core List, then from the "A" list.
3. Scheduled events for the upcoming week will be posted in the Banquet Office.
4. Core List Banquet Servers must sign up for work on the Server Sign-Up Sheet at sign-ups on Wednesday at 11 a.m.
5. Core List Servers and Captains must be available for a minimum of forty (40) hours per week when business needs warrant.
6. Work will be assigned to those Core List Servers who have not signed up for work five (5) days prior to the function and who do not have at least forty (40) hours per week.
7. All event service charge distributions will be posted in the Banquet Office and at the Red Table within seventy-two (72) hours of the event.
8. Employees must sign in and out, and must notify management immediately of any discrepancies in the posted gratuity sheets.
9. The Company will disclose menu items in the BEO (example: steak, chicken, fish or pretzels).
10. The Company will have a designated stationary sign-up area for each function which will be located in the Convention Gray Area.
11. Core List Servers and "A" List Servers will be scheduled by seniority "B" List Servers will be scheduled by rotation.
12. Servers who leave the Core List but wish to continue working will move to the top of the "A" List.
13. Any function that is scheduled within seventy-two (72) hours preceding the function shall be considered a pop-up event. Pop-up events will be scheduled by expedient seniority.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino

CULINARY WORKERS UNION,  
LOCAL 226

BY: [Signature]

ITS: 4/16/19 - Shannon Keel-GM

BY: [Signature]

ITS: Resident

BY: Leconda Aquello Kline

ITS: Ec. Treasurer

JK

## MEMORANDUM OF AGREEMENT SCHEDULING OF BANQUET FOOD SERVERS

Banquet Food Servers may be required to call a designated number reserved exclusively for banquet scheduling each week to advise the Scheduling Coordinator (or leave a message) of his/her availability for the upcoming workweek.

The Scheduling Coordinator will notify Banquet Food Servers of their upcoming weekly schedule by phone. It is understood that if the Coordinator is unable to reach the Banquet employee personally, and cannot leave a message, the Coordinator may proceed to the next Banquet employee on the list for distributing banquet food function assignments.


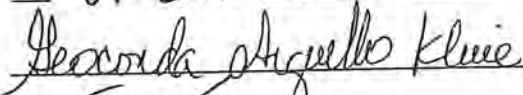

The Scheduling Coordinator shall allow a reasonable amount of time for Banquet Food Servers to respond to messages that are left with an individual or on a telephone-answering device.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino

BY:   
ITS: Shannon Keel-Gm

CULINARY WORKERS UNION,  
LOCAL 226

BY:   
ITS: President  
BY:   
ITS: Sec Treasurer 



## MEMORANDUM OF AGREEMENT COFFEE SERVICE

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between MEI-GSR HOLDINGS, LLC dba GRAND SIERRA RESORT (hereinafter referred to as Employer”) and the CULINARY WORKERS UNION LOCAL 226 (hereinafter referred to as “Union”), and attached to and made a part of the Collective Bargaining Agreement.

The parties hereby agree to the following terms:

Coffee Service shall be responsible for the following:

1. All bag lunches for under two hundred fifty (250) people;
2. All working lunches;
3. All roll-in Continental Breakfasts;
4. All roll-in Theme Breaks;
5. All Deli lunches for fewer than sixty (60) people;
6. All roll-in breaks that are not full sit-down service, other than receptions and/or pop-ups, which shall continue to be at management's discretion;
7. Coffee Service Department shall have a Coffee Core List of not more than three (3) people. The Core List must be available for the Coffee Department functions before the Banquet Department, and shall be accessed prior to any other crew for scheduling extras.
8. The Coffee Captains (days) and Assistant (afternoons) shall receive the same tip as the rest of the crew.
9. Opportunities for promotion to the supervisory position shall be offered within the Department whenever possible.
10. The Company will make available all equipment necessary for personnel to complete assigned duties and tasks.
11. The Coffee Department is responsible for set-up and break-down of Coffee Department functions.

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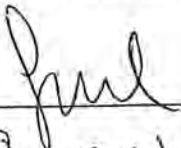
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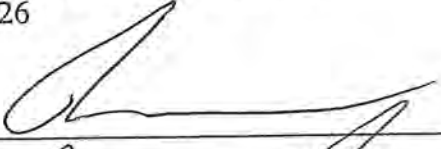


12. The Coffee Department is responsible for ordering and/or stocking of supplies for all Department functions.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino

BY:   
ITS: Shannon Keel - GM

CULINARY WORKERS UNION,  
LOCAL 226

BY:   
ITS: President:   
BY: Gerardo Aguillo Klein  
ITS: Sec. Treasurer 

### SIDE LETTER #1 LAUNDRY DEPARTMENT

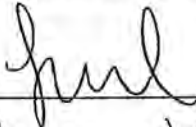
It is hereby agreed that Employees of the Laundry who are assigned to the flatwork section shall be rotated daily on an equitable basis.

After lateral transfers, all open grade II or grade III positions should be considered for promotional opportunities. Promotional opportunities should be offered to current employees of the laundry before transfers from other departments or new hires. Promotions will be awarded on qualifications, seniority and work record. The posting shall be for three (3) days.

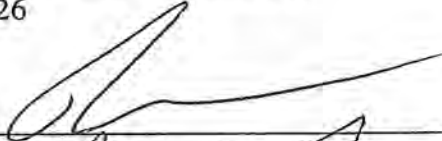
IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino

CULINARY WORKERS UNION,  
LOCAL 226

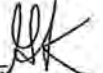
BY: 

ITS: Shannon Keel - GM

BY: 

ITS: President

BY: Gerardo Aguillo Kline

ITS: See Toessme 

## SIDE LETTER #2 OVERTIME

### Kitchen and Steward

The Employer shall post known overtime dates every ten (10) days. Sign-up sheets will be provided; and only interested qualified employees may sign the sheet.

The sign-up sheet will be available for sign-up until five (5) days prior to the date the overtime is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

### Laundry

The Employer shall post known overtime dates every two (2) weeks. Sign-up sheets will be provided; and only interested, qualified employees may sign the sheet. The sign-up sheet will be available for sign-up until five (5) days prior to the date the over tie is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

### Porter

The Employer shall post known overtime dates every ten (10) days. Sign-up sheets will be provided; and only interested, qualified employees may sign the sheet. The sign-up sheet will be available for sign-up until two (2) days prior to the date the overtime is needed.

There will be an equitable distribution of overtime.

The Company will post classification seniority for the affected employees.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

*[Signature]*

*Shannon Keel - GM*

CULINARY WORKERS UNION,  
LOCAL 226

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

*[Signature]*

*President*

*Georgette Aguella Kline*

*Fer. Ferrera*

*JK*

### **SIDE LETTER #3 BELL DEPARTMENT**

This is to confirm that the schedule of payments and distribution of gratuities as set forth below will be maintained for the duration of the labor agreement:

1. Service Charge for deliveries to guests' room (exclusive of luggage): Bell Persons receive Fifty Cents (\$.50) to deliver an item outside the room (i.e., door knob "goodie" bag) and One Dollar (\$1.00) to deliver an item inside the room. This is a per room delivery, not a per item delivery.
2. Flower Deliveries: Bell Persons are paid Three Dollars (\$3.00) for delivery of flowers from the gift shop. If a guest and/or outside flower company wants flowers delivered to a room, this is treated as a routine front, with no guarantee of gratuity.
3. Newspaper Deliveries: Bell Persons and/or Dispatcher are paid Twenty Cents (\$.20) per paper delivered to the doorstep of the guestroom.
4. Bus Group Service Charge Distributions: Bus groups are usually charged an average of Three Dollars (\$3.00) per person for the deliver/pick-up of luggage. Bell Captains receive fifteen percent (15%) from the total service charge, after which Bell Persons doing the check-in receive sixty percent (60%) of the balance of the service charge, and Bell Persons doing the checkout receive the remaining forty percent (40%). If a service charge is collected for luggage delivery and the Bell Person does not provide the service, the balance of the service charge (after Captain's fifteen percent (15%)) is retained by the Employer to offset salaries and wages. If the Bell Person carries less than fifty-one percent (51%) of the group, the employee receives One Dollar and Fifty Cents (\$1.50) per person, with fifteen percent (15%) going to the Captain and the balance going to the Employer.
5. Bus Group Assignments: Assignments are made to the low Bell Person based on the "PAX" count, which is a cumulative total of the number of people for which bags were moved. New Bell Persons are averaged in upon their position date. Low Bell Person is low for the shift; however, Captains have the discretions to reassign or change based on last-minute limo runs or other business-related issues.
6. Promotional Events and Complimented Guests: There is no guaranteed gratuity or service charge for these activities. They are treated as regular Front.
7. Limo Runs: Bell Persons shall not be required to do any transportation or driving including but not limited to Limo Runs, Sales Department VIP Transports, "entertainment runs" and Airport shuttle runs, except in cases of emergency in which case Bell Persons shall be paid a \$10.00 per hour above the Bell Person's hourly rate for such runs. The Employer may subcontract this transportation work, however the subcontractor may not do fronts or any other job duties currently done by Bell Persons.
8. Scooters: Bell Persons are paid Two Dollars (\$2.00) per scooter handled by the Bell Person.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino

CULINARY WORKERS UNION,  
LOCAL 226

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_



#### SIDE LETTER #4: COCKTAIL SERVER TASK FORCE

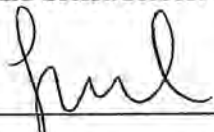
The parties agree to create a Cocktail Department specific Task Force tasked with determining how to improve customer service scores, which shall include a discussion of rotation of stations. The make-up of the Task Force will be such that those involved have decision making capability and will be limited to no more than six (6) people from the Company and six (6) people chosen by the Union (including the Union representative) each so that meaningful communication can occur. Those participating in the Task Force will be mindful that in order to make progress both parties need to clearly communicate their position on each issue in such a fashion that it demonstrates agreement and support amongst those they represent for their proposal on the table.

Both Parties agree that the Task Force will begin meeting no later than one (1) week after ratification of the Parties' labor agreement and will continue meeting until they have reached agreement on the issues specified here.


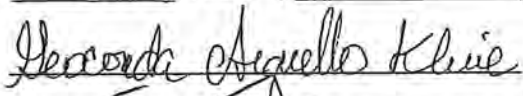
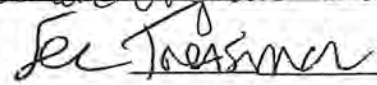
In the event that the Parties are unable to reach an agreement on the issues specified within sixty (60) days after ratification of the agreement, the Employer may implement its last proposal. However, whether the change implemented is a result of agreement by the parties or unilateral implementation by the Employer, the parties agree to meet within six (6) months of implementation to discuss whether changes are needed to the rotation process or whether the Employer should return to bidded stations.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino

BY:   
ITS: Shannon Keel - GM

CULINARY WORKERS UNION,  
LOCAL 226

BY:   
ITS: President  
BY:   
ITS:  JK



### SIDE LETTER #5: TIP COMPLIANCE

The Employer agrees that it will provide notice to the Union of any notification of changes it receives from the Internal Revenue Service (IRS) in the tip compliance rates under the Gaming Industry Tip Compliance Agreement (GITCA) with the IRS. Further, the Employer agrees it will join with the Union to negotiate any changes in these rates and will not make any unilateral agreement with the IRS related to the GITCA.

In the spirit of transparency, the Employer agrees to share with the Union tip compliance rates.

Finally, the Employer agrees that it shall join with the Union to seek discussions with the IRS to address any issues identified by the Union or the Employer related to the appropriateness of the tip compliance rates.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2019 in Washoe County, State of Nevada.

EMPLOYER - MEI-GSR Holdings, LLC  
dba Grand Sierra Resort & Casino

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

CULINARY WORKERS UNION,  
LOCAL 226

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_



1 CODE NO. 3370

2  
3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7  
8 IN AND FOR THE COUNTY OF WASHOE

9  
10 EDDY MARTEL (also known as MARTEL-  
11 RODRIGUEZ), MARY ANNE CAPILLA,  
12 JANICE JACKSON-WILLIAMS and WHITNEY  
VAUGHAN on behalf of themselves and all  
others similarly situated,

Case No. CV16-01264

Dept. No. 6

13 Plaintiffs,

14 vs.

15  
16 HG STAFFING, LLC, MEI-GSR HOLDINGS,  
17 LLC d/b/a GRAND SIERRA RESORT, and  
DOES 1 through 50, inclusive,

18 Defendants.

19 \_\_\_\_\_/  
20  
21 **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

22 Before this Court is the *Defendants' Motion for Summary Judgment, or in the*  
23 *Alternative, Summary Adjudication ("Motion")* filed by Defendants HG STAFFING, LLC and  
24 MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively, "GSR" unless  
25 individually referenced), by and through their counsel, Cohen|Johnson|Parker|Edwards.

26 //

27  
28 //

1 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),  
2 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-  
3 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of  
4 themselves and all others similarly situated, filed *Plaintiffs' Response to Defendants' Motion*  
5 *for Summary Judgment/Summary Adjudication* ("Response") by and through their counsel,  
6 Thierman Buck, LLP. GSR filed its *Reply in Support of Defendants' Motion for Summary*  
7 *Judgment, or in the Alternative, Summary Adjudication* ("Reply") and submitted the matter  
8 for decision thereafter.  
9

10  
11 **I. FACTUAL AND PROCEDURAL HISTORY.**

12 This action arises out of an employment dispute between Plaintiffs, employees, and  
13 GSR, employer, regarding wages paid by GSR to Plaintiffs and similarly situated  
14 employees. Mr. Martel was employed as an attendant in the Bowling Center. Ms. Capilla  
15 was employed as a dealer. Ms. Jackson-Williams was employed as a room attendant. And,  
16 Ms. Vaughan was employed as a dancing dealer (part cards dealer, part go-go dancer).  
17 See *Class Action Complaint* ("Complaint") and *First Amended Class Action Complaint*  
18 *("FAC")*, generally. On June 14, 2016, Plaintiffs filed their *Complaint* alleging GSR  
19 maintained the following policies, practices, and procedures which required various  
20 employees to perform work activities without compensation:  
21  
22

- 23 (1) GSR's Cash Bank Policy;
- 24 (2) Dance Class Policy;
- 25 (3) Room Attendant Pre-Shift Policy;
- 26 (4) Pre-Shift Meeting Policy;
- 27

28 //

1 (5) Uniform Policy; and,

2 (6) Shift Jamming Policy.

3 *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs assert four (4) claims for relief  
4 against GSR:  
5

6 (1) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and  
7 608.016;

8 (2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;

9 (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,  
10

11 (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant  
12 to NRS 608.140 and 608.020-.050.

13 Id., pp. 11-15.

14 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*  
15 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient  
16 information to support their claims and granted GSR's *Motion to Dismiss*. *Order*, pp. 9-10.  
17 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*  
18 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*  
19 *("Motion for Reconsideration")* requesting the Court reconsider its *Order* pursuant to NRCP  
20 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*  
21 *Reconsideration* on January 9, 2019 and denied Plaintiffs' request on the grounds they  
22 failed to state a claim but granted Plaintiffs leave to amend their *Complaint*. *Order Re*  
23 *Motion for Reconsideration*, pp. 8-9.  
24  
25

26 //

27 //

1 On January 29, 2019, Plaintiffs filed their *FAC* asserting the same four (4) claims.  
2 Thereafter, GSR filed its *Motion to Dismiss First Amended Complaint* (“*Motion to Dismiss*”),  
3 requesting this Court dismiss the *FAC* pursuant to NRCP 12(b)(5). *Motion to Dismiss*, p. 2.  
4 GSR argued the claims asserted in the *FAC* “have no more merit than Plaintiffs’ original  
5 claims.” *Motion to Dismiss*, p. 2. On June 7, 2019, the Court entered its *Order Granting, in*  
6 *Part, and Denying, in Part, Motion to Dismiss* (“*MTD Order*”) concluding a two-year statute  
7 of limitation applies to the Plaintiffs’ claims. *MTD Order*, p. 7. As such, the Court dismissed  
8 all of Ms. Capilla and Ms. Vaughan’s claims, all but one (1) month of Mr. Martel’s claims,  
9 and all but eighteen (18) months of Ms. Jackson-Williams’ claims. *MTD Order*, p. 14.

12 On May 23, 2019, GSR filed its *Motion for Summary Judgment on all Claims*  
13 *Asserted by Plaintiffs Martel, Capilla and Vaugh (sic)* (“*First MSJ*”) and argued Plaintiffs  
14 claims are barred by claim preclusion. *First MSJ*, p. 4.

16 On June 28, 2019, GSR filed its *Answer to First Amended Class Action Complaint*  
17 (“*Answer*”). In addition to admissions and denials to Plaintiffs’ allegations in the *FAC*, GSR  
18 asserted, among other affirmative defenses: failure to state a claim; claims are barred, in  
19 whole or in part, by the applicable statute of limitations; and, claims are barred due to GSR’s  
20 full performance of underlying obligations. *Answer*, generally.

22 On July 8, 2019, GSR filed *Defendants’ Second Motion for Summary Judgment as to*  
23 *Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs’ Lack of Standing to*  
24 *Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-*  
25 *Williams* (“*Second MSJ*”). GSR made the following arguments: (1) Mr. Martel’s claims are  
26 time-barred; (2) Plaintiffs lack standing to represent union employees who are exclusively  
27 represented by their unions; (3) Ms. Jackson-Williams’ claims are barred for failing to  
28



1 exhaust grievance procedures of the Culinary Collective Bargaining Agreement (“CBA”)  
2 and/or based on federal preemption; and, (4) Ms. Jackson-Williams’ claim for overtime is  
3 barred pursuant to NRS 608.018 because the CBA provides otherwise for overtime. See  
4 *Second MSJ*, generally.

5  
6 On July 9, 2019, before this Court rendered its decision on the *First MSJ* and *Second*  
7 *MSJ*, GSR filed its *Notice of Filing Petition for Writ of Mandamus and/or Prohibition*  
8 (*“Petition”*) with the Supreme Court of Nevada. In the *Petition*, GSR argued the dismissal of  
9 Plaintiffs’ first, third, and fourth claims for relief is mandatory on the grounds: Plaintiffs failed  
10 to exhaust administrative remedies as required by NRS Chapter 607; legislative mandated  
11 remedies must be exhausted despite an implied private right of action; and, NRS 607.215  
12 requires Plaintiffs exhaust administrative remedies before pursuing wage claims under NRS  
13 608.005 to 608.195. See *Petition*, generally.

14  
15 This Court entered its *Order Re Stipulation to Stay All Proceedings and Toll of the*  
16 *Five Year Rule* (*“Stipulation”*) on July 17, 2019 and withdrew GSR’s pending motions for  
17 summary judgment from submission, without prejudice, allowing renewal upon the Supreme  
18 Court of Nevada’s decision. *Stipulation*, p. 9.

19  
20 On May 7, 2020, the Supreme Court of Nevada entered its *Order Denying Petition*.  
21 The Supreme Court of Nevada reasoned Neville v. Eighth Judicial Dist. Court held, by  
22 necessary implication, exhaustion of administrative remedies is not required before filing an  
23 unpaid-wage claim in district court. 133 Nev. 77, 406 P.3d 499 (2017).

24  
25 On June 9, 2020, GSR filed the instant *Motion* and renewed the claims presented in  
26 the *Second MSJ* filed on May 23, 2019. GSR asserts Mr. Martel’s claims are time-barred  
27 because the Court’s June 7, 2019, *Order Granting, in Part, and Denying, in Part, Motion to*  
28

1 *Dismiss* found a two-year statute of limitations applies, barring claims accruing prior to June  
2 14, 2014. Mr. Martel worked his last shift on June 12, 2014. *Motion*, p. 3. GSR argues Ms.  
3 Jackson-Williams' claims are barred for failing to exhaust grievance procedures of the  
4 Culinary CBA and/or based on federal preemption because state law rights that can be  
5 altered by CBAs are preempted by CBAs and employees must make use of the grievance  
6 procedures in the CBAs or the claims will be dismissed as preempted by federal law.  
7 *Motion*, p. 4; citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-20 (1985); MGM  
8 Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d 821, 824 (1986). GSR  
9 contends Ms. Jackson-Williams' claim for overtime is barred because Article 9.01 of the  
10 CBA entitled, "WORK, SHIFTS, WORKWEEK, AND OVERTIME," "provides otherwise" for  
11 overtime, therefore exempting Ms. Jackson-Williams from the overtime provisions in  
12 Sections 1 and 2 of NRS 608.018. *Motion*, pp. 5-6. GSR argues the Plaintiffs lack standing  
13 to represent union employees who are exclusively represented by their respective unions.  
14 This is so, GSR maintains, because they are not in the same unions and the bargaining  
15 representatives of each union have not been given the opportunity to be present. *Motion*, p.  
16 7; citing 29 U.S.C. § 159(a); Vaca v. Sipes, 386 U.S. 171, 186 (1967).

17  
18 In the *Response*, Plaintiffs argue Mr. Martel's claim is not time-barred because an  
19 employee's claim for unpaid wages accrues thirty (30) days after the employment  
20 relationship ends. *Response*, p. 2; citing NRS 608.040-.050. Additionally, Plaintiffs argue  
21 GSR admitted it violated overtime requirements when it sent Mr. Martel and hundreds of  
22 other current and former employees checks for the unpaid overtime but did not pay  
23 continuation wages as mandated by NRS 608.040 and 608.050. *Id.* Plaintiffs assert, based  
24 on what they contend is black letter law, purported union employees are not required to  
25  
26  
27  
28

1 exhaust internal union grievance procedures before filing suit. *Response*, p. 12; citing NRS  
2 608.140 and 608.050. Plaintiffs next argue courts consistently find union and non-union  
3 employees can sue for and on behalf of each other when all allege they are victims of  
4 unlawful pay practices. *Response*, p. 13. Plaintiffs state Ms. Jackson-Williams is entitled to  
5 statutory overtime protections because the Culinary CBA is not a valid and operable CBA  
6 since it is an unsigned draft, and even if operable, the CBA does not provide overtime  
7 benefits beyond those conferred by NRS 608.018. *Response*, pp. 17-18. Plaintiffs request  
8 the opportunity to conduct further discovery on whether the Culinary Union and the CBA are  
9 operational if the Court is inclined to hold the CBA is valid. *Response*, p. 17.

12 In its *Reply*, GSR argues Mr. Martel conceded his underlying wage claims are barred  
13 by the applicable statute of limitation, and his derivative waiting time penalty claims under  
14 NRS 608.040 and 608.050 fail because they are contrary to accrual of claims case law and  
15 statutory language. *Reply*, p. 1. GSR argues Courts have repeatedly rejected assertions  
16 similar to Plaintiffs' assertion the Culinary CBA is invalid due to lack of execution. *Reply*, p.  
17 2. GSR further maintains the Culinary CBA has affirmed the validity of the CBA. *Id.* GSR  
18 contends during the entire term of her GSR employment Ms. Jackson-Williams was subject  
19 to the CBA, and the CBA "provides otherwise" for overtime, disqualifying Ms. Jackson-  
20 Williams from receiving overtime compensation. *Reply*, p. 9-10. GSR argues Ms. Jackson-  
21 Williams' claims for overtime are barred both because she did not exhaust the valid and  
22 binding CBA grievance procedures. *Reply*, pp. 12-13. GSR states, pursuant to 29 U.S.C. §  
23 159(a), the Culinary Union is the exclusive representative of the employees and Plaintiffs  
24 have not alleged a breach of the duty of fair representation, thereby conceding Plaintiffs  
25 cannot represent the employees. *Reply*, p. 16. Finally, GSR argues Plaintiffs are not

1 entitled to further discovery under NRCP 56(d) because Plaintiffs failed to provide the  
2 requisite affidavit. *Reply*, p. 17; citing Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872,  
3 265 P.3d 698, 700 (2011) and Bakerink v. Orthopaedic Assocs., Ltd., 94 Nev. 428, 431, 581  
4 P.2d 9, 11 (1978).

## 6 **II. STANDARD OF REVIEW; APPLICABLE LAW AND ANALYSIS**

7 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil  
8 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and  
9 affidavits, if any, that are properly before the court demonstrate that no genuine issue of  
10 material fact exists, and the moving party is entitled to judgment as a matter of law." Cuzze v.  
11 Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). A factual  
12 dispute is genuine when the evidence is such that a rational trier of fact could return a verdict  
13 for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031  
14 (2005). Further, a fact is material if the fact "might affect the outcome of the suit under the  
15 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510  
16 (1986). The pleadings and other proof "must be construed in a light most favorable to the  
17 nonmoving party," who bears the burden to "do more than simply show that there is some  
18 metaphysical doubt as to the operative facts in order to avoid summary judgment" in favor of  
19 the moving party. Id., 121 Nev. at 732, 121 P.3d at 1031. The substantive law controls which  
20 factual disputes are material and will preclude summary judgment; other factual disputes are  
21 irrelevant. Id., 121 Nev. at 731, 121 P.3d at 1031.

22 The manner in which each party may satisfy its burden of production depends on  
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze, 123  
24 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion, that

1 party must present evidence that would entitle it to a judgment as a matter of law in the  
2 absence of contrary evidence. Id. If the nonmoving party will bear the burden of persuasion  
3 at trial, the party moving for summary judgment may satisfy the burden of production in two  
4 ways: (1) the moving party may submit evidence which negates an essential element of the  
5 nonmoving party's claim, or (2) the moving party may merely point out the absence of  
6 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in order to  
7 defeat summary judgment, the nonmoving party must transcend the pleadings and, by  
8 affidavit or other admissible evidence, **introduce specific facts** that show a genuine issue of  
9 material fact. Id. "The non-moving party must not simply rely on the pleadings and must do  
10 more than make 'conclusory allegations [in] an affidavit.'" Choi v. 8<sup>th</sup> Bridge Capital, 2020  
11 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan v. Nat'l Wildlife Fed'n, 497  
12 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex Corp. v. Catrett, 477 U.S. 317,  
13 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment must be granted for the moving  
14 party if the nonmoving party 'fails to make showing sufficient to establish an element essential  
15 to that party's case, and on which that party bears the burden of proof at trial.'" Choi v. 8<sup>th</sup>  
16 Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (citing same).

20 In this case, GSR is the moving party that may submit evidence negating an essential  
21 element of Plaintiffs' claims, point out the absence of evidence, or establish the elements of  
22 a defense. Plaintiffs are the nonmoving party who must introduce specific facts that show a  
23 genuine issue of material fact exists.  
24

25 //

26 //

1 Pursuant to NRCP 56, even if the undisputed factual matters are established, a party  
2 must still establish the party is entitled to judgment as a matter of law. Kuptz-Blinkinsop v.  
3 Blinkinsop, 136 Nev. \_\_\_, \_\_\_, 466 P.3d 1271, 1273 (2020) (citing Wood v. Safeway, Inc.,  
4 121 Nev. at 729, 121 P.3d at 1029 (2005)).

6 **III. FINDINGS OF UNDISPUTED MATERIAL FACT.**

7 The Court finds the following material facts are undisputed:

- 8 1. The *Complaint* was filed in this matter on June 14, 2016.
- 9 2. GSR is an employer. *FAC*, ¶ 10; *Answer*, ¶ 8.
- 10 3. Mr. Martel was employed from on or about January 25, 2012 through June  
11 13, 2014. *FAC*, ¶ 20, 34, 49; *Motion*, p. 2; *Response*, p. 6.
- 12 4. Mr. Martel was employed as an arcade attendant and was not covered by a  
13 union or a collective bargaining agreement. *Response*, p. 7.
- 14 5. Mr. Martel voluntarily resigned from his employment with GSR on June 14,  
15 2014. Decl. of Eddy Martel-Rodriguez, ¶ 4; *Reply*, p. 3, n.1.
- 16 6. Mr. Martel's timeclock indicates he clocked into his final shift at GSR at 6:10  
17 p.m. on June 12, 2014. Mr. Martel clocked out on June 13, 2014 at 12:26 a.m. *Motion*, p.  
18 2, Ex. 1, Decl. of Eric Candela; *Response*, p. 6.
- 19 7. Mr. Martel was paid every two weeks and last paycheck was paid on June 16,  
20 2014. *Reply*, Ex. 1, Decl. of Cynthia Williams, ¶ 3.
- 21 8. Ms. Jackson-Williams was employed as a guest attendant from April 2014,  
22 through December, 2015. *FAC*, ¶ 6; *Motion*, p. 2; *Response*, p. 7.
- 23 9. The Culinary CBA is unsigned. *Motion*, p. 7, n.1; *Response*, p. 16; Decl. of  
24 Susan Heaney Hilden, ¶ 2.



1        10.     Article 9.01 of the Culinary CBA provides:

2        The workweek pay period shall be from Friday through Thursday. For  
3        purposes of computing overtime, for an employee scheduled to work five (5)  
4        days in one (1) workweek, any hours in excess of eight (8) hours in a day or  
5        forty (40) hours in a week shall constitute overtime. For an employee  
6        scheduled to work four (4) days in one (1) workweek, any hours worked in  
7        excess of ten (10) hours in a day or forty (40) hours in a week shall constitute  
8        overtime. . . . Employees absent for personal reasons on one (1) or more of  
9        their first five (5) scheduled days of work in their workweek shall work at the  
10       Employee's request on a scheduled day off in the same workweek at straight  
11       time.

12       *Motion*, p. 6; *Motion*, Ex. 2, Decl. of Susan Hilden, Ex. 1; *Response*, pp. 18-19.

13       11.     Pursuant to the Operating Engineers CBA, GSR recognizes the International  
14       Union of Operating Engineers Stationary Local No. 39 AFL-CIO as "the exclusive bargaining  
15       representative for . . . all draftsmen, carpenters, engineers, locksmiths, painters, upholsters,  
16       certified pool operators and engineering department laborers." *Motion*, Ex. 2, Decl. of  
17       Susan Hilden, ¶ 11; *Response*, p. 6.

18       12.     Pursuant to the IATSE CBA, GSR recognizes the International Alliance of  
19       Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the  
20       United States, its Territories and Canada, AFL-CIO, CLC LOCAL Union No. 362 ("IATSE")  
21       as "the Exclusive collective bargaining representative for . . . all entertainment department  
22       employees performing carpentry, electrical, electronic, sound and property work, including  
23       stage hands, stage technicians, stage laborers, lounge technicians, convention technicians,  
24       spotlight operators and technicians, stage electricians, sound personnel, projectionists,  
25       operators of all audio-visual equipment used in connection with the Employer's  
26       entertainment and convention operations and all wardrobe personnel . . ." *Motion*, Ex. 2,  
27       Decl. of Susan Hilden, ¶12; *Response*, p. 6.

28       //

1           13.     The Culinary Union has filed grievances under the Culinary CBA, and  
2 arbitrations have taken place. *Motion*, Ex. 2, Decl. of Susan Heaney Hilden, ¶¶ 3-7; Ex. 3,  
3 Decl. of Larry Montrose, ¶ 5.

4  
5           14.     To the extent any of the following conclusions of law include, or may be  
6 construed to include, findings of fact, they are incorporated here.

7     **IV.   CONCLUSIONS OF LAW.**

8           To the extent any of the foregoing findings of fact constitute, or may be construed  
9 to constitute, conclusions of law they are incorporated here:

10  
11     **A.    STATUTE OF LIMITATION.**

12           1.     The Minimum Wage Act (MWA) guarantees employees payment of a specified  
13 minimum wage and gives an employee whose employer violates the MWA the right to bring  
14 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d  
15 257, 258 (2016).

16           2.     A two-year statute of limitation applies to actions for failure to pay the  
17 minimum wage in violation of the Nevada constitution. Id. at 262.

18  
19           3.     The two-year statute of limitation period applies to NRS 608 statutory wage  
20 claims that are analogous to a cause of action for failure to pay an employee the lawful  
21 minimum wage. Id.

22           4.     NRS 608.040 provides:

23  
24           1.     If an employer fails to pay:

25               (a) Within 3 days after the wages or compensation of a discharged  
26 employee becomes due; or

27               (b) On the day the wages or compensation is due to an employee who  
28 resigns or quits, the wages or compensation of the employee continues at the  
same rate from the day the employee resigned, quit or was discharged until  
paid or for 30 days, whichever is less.

2.     Any employee who secretes or absents himself or herself to avoid  
payment of his or her wages or compensation, or refuses to accept them when

1 fully tendered to him or her, is not entitled to receive the payment thereof for  
2 the time he or she secretes or absents himself or herself to avoid payment.

3 NRS 608.040.

4 5. NRS 608.050 provides:

5 1. Whenever an employer of labor shall discharge or lay off employees  
6 without first paying them the amount of any wages or salary then due them, in  
7 cash and lawful money of the United States, or its equivalent, or shall fail, or  
8 refuse on demand, to pay them in like money, or its equivalent, the amount of  
9 any wages or salary at the time the same becomes due and owing to them  
10 under their contract of employment, whether employed by the hour, day, week  
11 or month, each of the employees may charge and collect wages in the sum  
12 agreed upon in the contract of employment for each day the employer is in  
13 default, until the employee is paid in full, without rendering any service  
14 therefor; but the employee shall cease to draw such wages or salary 30 days  
15 after such default.

16 2. Every employee shall have a lien as provided in NRS 108.221 to  
17 108.246, inclusive, and all other rights and remedies for the protection and  
18 enforcement of such salary or wages as the employee would have been  
19 entitled to had the employee rendered services therefor in the manner as last  
20 employed.

21 NRS 608.050.

22 6. When a derivative claim is dependent on the success of an underlying claim  
23 and the underlying "claim having not been established," then the derivative claim "must fail  
24 as well." Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 222 n.31, 180 P.3d 1172,  
25 1178 n.31 (2008).

26 7. A two-year statute of limitation applies to the claims in this action. Claims  
27 which accrued prior to June 14, 2014 are therefore barred by the statute of limitation. See  
28 *Order Granting, in Part, and Denying, in Part, Motion to Dismiss* pp. 7-11.

8. Mr. Martel maintains his fourth cause of action for waiting time penalties under  
NRS 608.040 and 608.050 is timely because his cause of action did not accrue until thirty  
(30) days after his last day of work.

1           9.       Based on its plain language, NRS 608.050 is inapplicable to Mr. Martel.  
2       Section 608.050 applies to employees who are discharged or laid off by their employer.  
3       See NRS 608.050(1). Mr. Martel resigned from his job.

4           10.      Section 608.040 of the Nevada Revised Statutes does not apply to wages that  
5       are not accrued during the final pay period of the employee.

6           11.      No shift jamming, no off-the-clock banking, and no pre-shift meetings occurred  
7       during Mr. Martel's final pay period. Mr. Martel's last shift ended on June 13, 2014.

8           12.      Therefore, the two-year statute of limitation applies to Mr. Martel's claims.  
9       The *Complaint* was filed on June 14, 2016.

10          13.      NRS 608.040 does not save Mr. Martel's claims. "[W]hen a statute 'is clear on  
11       its face, a court cannot go beyond the statute in determining legislative intent.'" State v.  
12       Lucero, 249 P.3d 1226, 1228 (2011) (citing Robert E. v. Justice Court, 99 Nev. 443, 445  
13       (1983)). The Court finds NRS 608.040 is clear on its face that it does not apply to all wages,  
14       but rather wages due for the pay period before the employee is discharged or quits.  
15       Nothing in the statute indicates the rule applies to previously unpaid wages or exists to  
16       create a cause of action for those wages.

17          14.      The two-year statute of limitation applies to: Plaintiffs' First Cause of Action for  
18       Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016;  
19       Second Cause of Action for Failure to Pay Minimum Wages in Violation of the Nevada  
20       Constitution; Third Cause of Action for Failure to Pay Overtime Wages in Violation of NRS  
21       608.140 and 608.018; and, Fourth Cause of Action for Failure to Timely Pay All Wages Due  
22       and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.

1           15. Defendants met their burden and established their statute of limitation defense  
2 to Plaintiffs' claims as a matter of law.

3           16. Summary judgment should be entered on each of Mr. Martel's claims as they  
4 are time-barred.

5           17. After application of the two-year statute of limitation, Ms. Jackson-Williams'  
6 claims remain for an eighteen-month period only.

7  
8           **B. CBA VALIDITY AND ABILITY TO PROVIDE OTHERWISE FOR OVERTIME**

9           **1. Validity of the CBA**

10           18. The CBA purportedly expired by its own terms on or about May 1, 2011. The  
11 CBA has not been extended by signature, however, GSR contends the CBA has been  
12 extended by ratification.

13           19. Unsigned CBAs have been found valid and operative when an employer has  
14 continued to treat the CBA as binding and effective and employee could not point to  
15 evidence to the contrary. Bloom v. Universal City Studios, 933 F.2d 1013, 1991 WL 80602  
16 at \*1 (9th Cir. 1991) (unpublished); See Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc., 369  
17 U.S. 17, 24 n. 6 (1962) (finding CBA valid even when parties did not negotiate directly and  
18 did not consolidate signatures on one document).

19           20. A union will generally be held defunct if it has ceased to exist as an effective  
20 labor organization and is no long fulfilling responsibilities in administering the contract.  
21 Hershey Chocolate Corp., 121 NLRB 901, 911, 42 LRRM 1460 (1958); see also Pioneer Inn  
22 Associates v. N.L.R.B., 578 F.2d 835, 839-40 (1978) (explaining inactivity, failure to monitor  
23 contract provisions, and failure to pursue grievances may indicate a failure to administer the  
24 contract).

1           21.     Signatures on collective bargaining agreements are “not a prerequisite to  
2 finding an employer bound to that agreement.” Line Const. Ben. Fund v. Allied Elec.  
3 Contractors, Inc., 591 F.3d 576, 580 (7th Cir. 2010); N.L.R.B. v. Electra-Food Mach. Inc.,  
4 621 F.2d 956, 958 (9th Cir. 1980) (holding oral agreements are sufficient to create binding  
5 collective bargaining agreements even when written agreement is unsigned); N.L.R.B. v.  
6 Haberman Const. Co., 641 F.2d 351, 356 (5th Cir. 1981) (en banc) (“[A] union and  
7 employer’s adoption of a labor contract is not dependent on the reduction to writing of their  
8 intention to be bound”).  
9  
10

11           22.     If the union and the employer continue to operate as if the CBA is operative,  
12 the CBA is binding. Here, the union and GSR engaged in arbitration and negotiation when  
13 mandated by the CBA. GSR continued to negotiate and arbitrate with the union on multiple  
14 occasions. For example, Mr. Montrose confirmed he interacts with the Culinary Union  
15 Representative Nicolaza De La Puente weekly and he was notified of at least two different  
16 grievances in 2015. *Motion*, Decl. of Larry Montrose, Ex B., Ex. C. The CBA was “ratified  
17 by the Union on November 17, 2011, and it was in effect through March 10, 2018, when a  
18 subsequent Culinary CBA was ratified.” *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. An  
19 arbitration was held on August 25, 2016, in which the parties introduced the CBA as Joint  
20 Exhibit 1. *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. Following the August 25, 2016,  
21 arbitration, the Culinary Union submitted a Post-Hearing Brief dated October 24, 2016 in  
22 which the Union states, “Local 226 has been party to three successive collective-bargaining  
23 agreements at the hotel casino that is now known as the Grand Sierra Resort.” *Id.* Plaintiffs  
24 contend the CBA expired in May of 2011 but provide the Court with no evidence to dispute  
25  
26  
27  
28

1 that the union and the GSR continued to treat the CBA as binding. Undisputed evidence  
2 confirms the CBA was valid and operative.

3           **2.     The CBA “provides otherwise” for overtime**

4  
5           23.     NRS 608.018(1)-(2) governs compensation for overtime and reads:

6           1.     An employer shall pay 1 1/2 times an employee's regular wage rate  
7 whenever an employee who receives compensation for employment at a rate  
8 less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:

9           (a) More than 40 hours in any scheduled week of work; or

10           (b) More than 8 hours in any workday unless by mutual agreement the  
11 employee works a scheduled 10 hours per day for 4 calendar days within any  
12 scheduled week of work.

13           2.     An employer shall pay 1 1/2 times an employee's regular wage rate  
14 whenever an employee who receives compensation for employment at a rate  
15 not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works  
16 more than 40 hours in any scheduled week of work.

17           NRS 608.018(1)-(2).

18           24.     Section 608.018(3) of the Nevada Revised Statutes provides, “[t]he provisions  
19 of subsections 1 and 2 do not apply to . . . (e) Employees covered by collective bargaining  
20 agreements which provide otherwise for overtime . . .” NRS 608.018(3) (emphasis added).

21           25.     The CBA provides:

22           The workweek pay period shall be from Friday through Thursday. For the  
23 purposes of computing overtime, for an employee scheduled to work five (5)  
24 days in one (1) workweek, any hours in excess of eight (8) hours in a day or  
25 forty (40) hours in a week shall constitute overtime. For an employee  
26 scheduled to work four (4) days in one (1) workweek, any hours worked in  
27 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute  
28 overtime. Overtime shall be effective and paid only after the total number of  
hours not worked due to early ours is first subtracted from the total number of  
hours actually worked per shift, per workweek. Overtime shall not be paid  
under this Section for more than one (1) reason for the same hours worked.  
Employees absent for personal reasons on one (1) or more of their first five (5)  
scheduled days of work in their workweek shall work at the Employer’s request  
on a scheduled day off in the same workweek at straight time. If the employer  
anticipates such scheduling, the Employer provide five (5) days’ advance  
notice.



1 This provision will remain in effect for the duration of this Agreement.  
2 However, at the expiration of the Agreement, the Employer shall have the  
3 right to compute and pay overtime in accordance with the provisions of  
4 existing federal and state law, and Union employees shall not have the right  
to overtime pay above and beyond the applicable federal and state law  
requirements.

5 See Motion, Ex. 2A, p. 15.

6 26. CBAs “provide otherwise” for overtime payments when the CBA “contains a  
7 negotiated provision on the same subject but different from the statutory provision.”  
8 Firestone v. Southern California Gas Co., 219 F.3d 1063, 1067, 164 L.R.R.M. 2897, 2897  
9 (9th Cir. 2000); Jacobs v. Mandalay Corp., 378 F. App’x 685, 687 (9th Cir. 2010) (“[S]ection  
10 608.018 exempts from coverage those employees ‘covered by collective bargaining  
11 agreements which provide otherwise for overtime.’”).  
12

13 27. The instant CBA “provides otherwise” for overtime. The CBA provides  
14 otherwise for overtime because there are differences in both the practical effects of the  
15 overtime provisions in NRS 608.018 and in the CBA’s overtime provisions, as well as the  
16 textual provisions. For example, NRS 608.018(1) provides that an employer shall pay 1 1/2  
17 times the employee’s regular wage when the employee works more than 40 hours in a week  
18 or more than 8 hours in a day. The CBA does not specify what the pay rate shall be.  
19 Additionally, the CBA provides for overtime regardless of the employee’s wage, while NRS  
20 608.018 only mandates overtime for employees making more than 1 1/2 the minimum wage.  
21 NRS 608.018 provides overtime regardless of how many days are worked in a week, while  
22 the CBA allows overtime only when employees work five days in one workweek. NRS  
23 608.018 does not limit overtime if an employee misses a scheduled day and works an  
24 alternate day, however, the CBA does. Accordingly, the CBA “provides otherwise” for  
25 overtime.  
26  
27  
28

1           28.     The CBA “provides otherwise” for Ms. Jackson-Williams’ claim for overtime  
2 and NRS 608.018 does not provide a legal basis for her claim.

3           **3.     Grievance Procedures of the Culinary CBA**

4           29.     Section 301 of the Labor Management Relations Act states:

5                 Suits for violation of contracts between an employer and a labor organization  
6                 representing employees in an industry affecting commerce ... may be brought  
7                 in any district court of the United States having jurisdiction of the parties....

8           Labor Management Relations Act of 1947 § 301(a), 29 U.S.C. § 185(a) (1982).

9           30.     Employees may pursue claims for unpaid wages through a private cause of  
10           action and without enforcing the claim through the Labor Commissioner. Neville v. Eighth  
11           Judicial Dist. Court in & for Cty. of Clark, 133 Nev. 777, 782, 406 P.3d 499, 504 (2017).

12           31.     State law rights and obligations that do not exist independently of private  
13           agreements can be waived or altered by agreement as a result and are pre-empted by  
14           those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d  
15           821, 824 (1986) (citing Allis Chalmers v. Lueck, 471 U.S. 202, 105 S.Ct. 1904 (1985)).

16           32.     Workers do not have to submit to arbitration procedures when redressing  
17           grievances because a CBA provides contractual rights, but workers may have an  
18           independent statutory right to enforce individual rights. Albertson’s, Inc. v. United Food &  
19           Commercial Workers Union, ALF-CIO & CLC, 157 F.3d 758, 762 (9th Cir.).

20           33.     Whether Ms. Jackson-Williams must follow the grievance procedures  
21           contained in the CBA depends on whether she has an independent statutory right to enforce  
22           her claims for wages and overtime outside of the CBA. Ms. Jackson-Williams brought  
23           claims for Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and  
24           608.016, Failure to Pay Overtime Wages in Violation of the Nevada Constitution, Failure to  
25           Pay Minimum Wages in Violation of NRS 608.140 and 608.018, and Failure to Pay All

1 Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608-040-050. The  
2 State of Nevada provides independent statutory rights to each of Ms. Jackson-Williams'  
3 claims through the Nevada Revised Statutes and the Nevada Constitution. Albertson's Inc.  
4 explains, "in filing a lawsuit under [a statute], an employee asserts independent statutory  
5 rights . . . The distinctly separate nature of these contractual and statutory rights is not  
6 vitiated merely because both were violated as a result of the same factual occurrence." 157  
7 F.3d at 761. Since there are state-law rights at issue, Ms. Jackson-Williams' claims are not  
8 preempted, and the claims are not mandated to proceed through the grievance procedure of  
9 the CBA.  
10  
11

12 **4. Lack of Standing to Represent Union Employees**

13 34. Section 159(a) of the United States Code states:

14 Representatives designated or selected for the purposes of collective  
15 bargaining by the majority of the employees in a unit appropriate for such  
16 purposes, shall be the exclusive representatives of all the employees in  
17 such unit for the purposes of collective bargaining in respect to rates of pay,  
wages, hours of employment, or other conditions of employment.

18 29 U.S.C. § 159(a).

19 35. Baristas, bartenders, and cocktail servers are represented by the Culinary  
20 CBA; construction workers are covered by the Operating Engineers CBA; and, technicians  
21 are represented by the AFL-CIO Local Union. Plaintiffs, as members of the "shift jamming  
22 class" attempt to represent union members from other sub-classes.  
23

24 36. Employees may bring an action against an employer without exhausting  
25 contractual remedies, but the employees must "prove that the union as bargaining agent  
26 breached its duty of fair representation in its handling of the employee's grievance." Vaca v.  
27 Sipes, 386 U.S. 171, 186, 87 S.Ct. 903, 914 (1967).  
28

1           37. When employees sue to vindicate “uniquely personal rights” as opposed to  
2 rights reserved to unions like picketing, renegotiating a contract, or protesting relocation, the  
3 employees have standing to sue on their own behalf and on behalf of other union members.  
4  
5 Lucas v. Bechtel Corp., 633 F.2d 757, 759 (9th Cir. 1980) (citing Hines v. Anchor Motor  
6 Freight, Inc., 424 U.S. 554, 562, 96 S.Ct. 1048, 1055 (1976)).

7           38. In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh Circuit  
8 held that where a “suit is at its core about the adequacy of the wages [the employer] pays,”  
9 individual employees may not represent union workers in a class action when the union has  
10 not breached its duty of fair representation.” The court reasoned union workers “have a  
11 representative—one that under the NLRA is supposed to be ‘exclusive’ with respect to  
12 wages” and therefore “Plaintiffs’ request to proceed on behalf of a class of all workers  
13 shows that they seek to usurp the union’s role.” Id. at 686, 690.

14  
15           39. Plaintiffs do not assert the Union has breached its duty of fair representation.  
16 The CBA is valid and operative. Plaintiffs cannot represent those other union members who  
17 are represented by separate unions without asserting those union representatives breached  
18 their duty of fair representation.  
19

20           **C. PLAINTIFFS’ REQUEST FOR ADDITIONAL DISCOVERY**  
21           **PURSUANT TO NRCP 56.**

22           40. Nevada Rules of Civil Procedure Rule 56 provides:

- 23           (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant  
24 shows by affidavit or declaration that, for specified reasons, it cannot  
25 present facts essential to justify its opposition, the court may:  
26           (1) defer considering the motion or deny it;  
27           (2) allow time to obtain affidavits or declarations or to take discovery; or  
28           (3) issue any other appropriate order.

NRCP 56(d).

41. A party opposing summary judgment pursuant to NRCP 56(d) has the burden of affirmatively demonstrating by a good-faith affidavit (1) the identification of the specific facts that further discovery would reveal; (2) the specific reasons why such evidence is presently unavailable; and (3) how those facts would preclude summary judgment. Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortgage Corp., 525 F.3d 822, 827 (9th Cir. 2008); Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 657, 669-70, 262 P.3d 705, 714 (2011).

42. Plaintiffs request additional discovery to ascertain whether the CBA is valid or not. Plaintiffs have not provided an affidavit, have not articulated the specific reasons why the evidence they need is unavailable to them, and have not stated how those facts would preclude summary judgment.

## V. CONCLUSION AND ORDER.

Based on the foregoing findings of fact and conclusions of law and good cause appearing therefore,

IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against the Plaintiffs.

DATED this 2nd day of November, 2020.

DISTRICT JUDGE

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Attorneys for Defendants

**IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

EDDY MARTEL (also known as MARTEL-  
RORIGUEZ), MARY ANNE CAPILLA,  
JANICE JACKSON-WILLIAMS and  
WHITNEY VAUGHAN on behalf of  
themselves and all others similarly situated,

Case No.: CV16-01264

Plaintiffs,

v.

HG STAFFING, LLC, MEI-GSR HOLDINGS,  
LLC d/b/a GRAND SIERRA RESORT, and  
DOES 1 through 50, inclusive,

Defendants.

**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

NOTICE IS HEREBY GIVEN that an Order Granting Defendants' Motion for Summary  
Judgment filed on June 9, 2020, was entered on November 3, 2020. A copy of the Order is  
attached hereto.

**AFFIRMATION**

**Pursuant to NRS 239B.030 and 603A.040**

The undersigned does hereby affirm that the preceding document in Case Number



1 CV16-01264, and exhibit hereto, does not contain the personal information of any person.

2 Dated this 6th day of November, 2020.

3 **SUSAN HEANEY HILDEN, ESQ.**

4 By: /s/ Susan Heaney Hilden  
5 Susan Heaney Hilden Esq., Nevada Bar No. 5358  
6 Attorney for Defendants  
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**PROOF OF SERVICE**

CASE NAME: Martel et. al vs. HG Staffing, LLC. at el.  
Court: District Court of the State of Nevada  
Case No.: CV16-01264

On the date last written below, following document(s) was served as follows:

**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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\_\_\_\_\_ by Federal Express/UPS or other overnight delivery addressed to:

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*Attorney for Plaintiffs*

DATED the 6th day of November 2020.

/s/ Susan Heaney Hilden

1 CODE NO. 3370

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5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9  
10 EDDY MARTEL (also known as MARTEL-  
11 RODRIGUEZ), MARY ANNE CAPILLA,  
12 JANICE JACKSON-WILLIAMS and WHITNEY  
VAUGHAN on behalf of themselves and all  
others similarly situated,

Case No. CV16-01264

Dept. No. 6

13 Plaintiffs,

14 vs.

15  
16 HG STAFFING, LLC, MEI-GSR HOLDINGS,  
17 LLC d/b/a GRAND SIERRA RESORT, and  
DOES 1 through 50, inclusive,

18 Defendants.  
19 \_\_\_\_\_/

20 **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

21  
22 Before this Court is the *Defendants' Motion for Summary Judgment, or in the*  
23 *Alternative, Summary Adjudication ("Motion")* filed by Defendants HG STAFFING, LLC and  
24 MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively, "GSR" unless  
25 individually referenced), by and through their counsel, Cohen|Johnson|Parker|Edwards.

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1 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),  
2 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-  
3 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of  
4 themselves and all others similarly situated, filed *Plaintiffs' Response to Defendants' Motion*  
5 *for Summary Judgment/Summary Adjudication* ("Response") by and through their counsel,  
6 Thierman Buck, LLP. GSR filed its *Reply in Support of Defendants' Motion for Summary*  
7 *Judgment, or in the Alternative, Summary Adjudication* ("Reply") and submitted the matter  
8 for decision thereafter.  
9

10  
11 **I. FACTUAL AND PROCEDURAL HISTORY.**

12 This action arises out of an employment dispute between Plaintiffs, employees, and  
13 GSR, employer, regarding wages paid by GSR to Plaintiffs and similarly situated  
14 employees. Mr. Martel was employed as an attendant in the Bowling Center. Ms. Capilla  
15 was employed as a dealer. Ms. Jackson-Williams was employed as a room attendant. And,  
16 Ms. Vaughan was employed as a dancing dealer (part cards dealer, part go-go dancer).  
17 See *Class Action Complaint* ("Complaint") and *First Amended Class Action Complaint*  
18 *("FAC")*, generally. On June 14, 2016, Plaintiffs filed their *Complaint* alleging GSR  
19 maintained the following policies, practices, and procedures which required various  
20 employees to perform work activities without compensation:  
21  
22

- 23 (1) GSR's Cash Bank Policy;
- 24 (2) Dance Class Policy;
- 25 (3) Room Attendant Pre-Shift Policy;
- 26 (4) Pre-Shift Meeting Policy;
- 27

28 //

1 (5) Uniform Policy; and,

2 (6) Shift Jamming Policy.

3 *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs assert four (4) claims for relief  
4 against GSR:  
5

6 (1) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and  
7 608.016;

8 (2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;

9 (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,  
10

11 (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant  
12 to NRS 608.140 and 608.020-.050.

13 Id., pp. 11-15.

14 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*  
15 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient  
16 information to support their claims and granted GSR's *Motion to Dismiss*. *Order*, pp. 9-10.  
17 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*  
18 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*  
19 *("Motion for Reconsideration")* requesting the Court reconsider its *Order* pursuant to NRCP  
20 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*  
21 *Reconsideration* on January 9, 2019 and denied Plaintiffs' request on the grounds they  
22 failed to state a claim but granted Plaintiffs leave to amend their *Complaint*. *Order Re*  
23 *Motion for Reconsideration*, pp. 8-9.  
24  
25

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1 On January 29, 2019, Plaintiffs filed their *FAC* asserting the same four (4) claims.  
2 Thereafter, GSR filed its *Motion to Dismiss First Amended Complaint* (“*Motion to Dismiss*”),  
3 requesting this Court dismiss the *FAC* pursuant to NRCP 12(b)(5). *Motion to Dismiss*, p. 2.  
4 GSR argued the claims asserted in the *FAC* “have no more merit than Plaintiffs’ original  
5 claims.” *Motion to Dismiss*, p. 2. On June 7, 2019, the Court entered its *Order Granting, in*  
6 *Part, and Denying, in Part, Motion to Dismiss* (“*MTD Order*”) concluding a two-year statute  
7 of limitation applies to the Plaintiffs’ claims. *MTD Order*, p. 7. As such, the Court dismissed  
8 all of Ms. Capilla and Ms. Vaughan’s claims, all but one (1) month of Mr. Martel’s claims,  
9 and all but eighteen (18) months of Ms. Jackson-Williams’ claims. *MTD Order*, p. 14.

12 On May 23, 2019, GSR filed its *Motion for Summary Judgment on all Claims*  
13 *Asserted by Plaintiffs Martel, Capilla and Vaugh (sic)* (“*First MSJ*”) and argued Plaintiffs  
14 claims are barred by claim preclusion. *First MSJ*, p. 4.

16 On June 28, 2019, GSR filed its *Answer to First Amended Class Action Complaint*  
17 (“*Answer*”). In addition to admissions and denials to Plaintiffs’ allegations in the *FAC*, GSR  
18 asserted, among other affirmative defenses: failure to state a claim; claims are barred, in  
19 whole or in part, by the applicable statute of limitations; and, claims are barred due to GSR’s  
20 full performance of underlying obligations. *Answer*, generally.

22 On July 8, 2019, GSR filed *Defendants’ Second Motion for Summary Judgment as to*  
23 *Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs’ Lack of Standing to*  
24 *Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-*  
25 *Williams* (“*Second MSJ*”). GSR made the following arguments: (1) Mr. Martel’s claims are  
26 time-barred; (2) Plaintiffs lack standing to represent union employees who are exclusively  
27 represented by their unions; (3) Ms. Jackson-Williams’ claims are barred for failing to  
28

1 exhaust grievance procedures of the Culinary Collective Bargaining Agreement (“CBA”)  
2 and/or based on federal preemption; and, (4) Ms. Jackson-Williams’ claim for overtime is  
3 barred pursuant to NRS 608.018 because the CBA provides otherwise for overtime. See  
4 *Second MSJ*, generally.

5  
6 On July 9, 2019, before this Court rendered its decision on the *First MSJ* and *Second*  
7 *MSJ*, GSR filed its *Notice of Filing Petition for Writ of Mandamus and/or Prohibition*  
8 (*“Petition”*) with the Supreme Court of Nevada. In the *Petition*, GSR argued the dismissal of  
9 Plaintiffs’ first, third, and fourth claims for relief is mandatory on the grounds: Plaintiffs failed  
10 to exhaust administrative remedies as required by NRS Chapter 607; legislative mandated  
11 remedies must be exhausted despite an implied private right of action; and, NRS 607.215  
12 requires Plaintiffs exhaust administrative remedies before pursuing wage claims under NRS  
13 608.005 to 608.195. See *Petition*, generally.

14  
15 This Court entered its *Order Re Stipulation to Stay All Proceedings and Toll of the*  
16 *Five Year Rule* (*“Stipulation”*) on July 17, 2019 and withdrew GSR’s pending motions for  
17 summary judgment from submission, without prejudice, allowing renewal upon the Supreme  
18 Court of Nevada’s decision. *Stipulation*, p. 9.

19  
20 On May 7, 2020, the Supreme Court of Nevada entered its *Order Denying Petition*.  
21 The Supreme Court of Nevada reasoned Neville v. Eighth Judicial Dist. Court held, by  
22 necessary implication, exhaustion of administrative remedies is not required before filing an  
23 unpaid-wage claim in district court. 133 Nev. 77, 406 P.3d 499 (2017).

24  
25 On June 9, 2020, GSR filed the instant *Motion* and renewed the claims presented in  
26 the *Second MSJ* filed on May 23, 2019. GSR asserts Mr. Martel’s claims are time-barred  
27 because the Court’s June 7, 2019, *Order Granting, in Part, and Denying, in Part, Motion to*  
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1 *Dismiss* found a two-year statute of limitations applies, barring claims accruing prior to June  
2 14, 2014. Mr. Martel worked his last shift on June 12, 2014. *Motion*, p. 3. GSR argues Ms.  
3 Jackson-Williams' claims are barred for failing to exhaust grievance procedures of the  
4 Culinary CBA and/or based on federal preemption because state law rights that can be  
5 altered by CBAs are preempted by CBAs and employees must make use of the grievance  
6 procedures in the CBAs or the claims will be dismissed as preempted by federal law.  
7 *Motion*, p. 4; citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-20 (1985); MGM  
8 Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d 821, 824 (1986). GSR  
9 contends Ms. Jackson-Williams' claim for overtime is barred because Article 9.01 of the  
10 CBA entitled, "WORK, SHIFTS, WORKWEEK, AND OVERTIME," "provides otherwise" for  
11 overtime, therefore exempting Ms. Jackson-Williams from the overtime provisions in  
12 Sections 1 and 2 of NRS 608.018. *Motion*, pp. 5-6. GSR argues the Plaintiffs lack standing  
13 to represent union employees who are exclusively represented by their respective unions.  
14 This is so, GSR maintains, because they are not in the same unions and the bargaining  
15 representatives of each union have not been given the opportunity to be present. *Motion*, p.  
16 7; citing 29 U.S.C. § 159(a); Vaca v. Sipes, 386 U.S. 171, 186 (1967).

17  
18 In the *Response*, Plaintiffs argue Mr. Martel's claim is not time-barred because an  
19 employee's claim for unpaid wages accrues thirty (30) days after the employment  
20 relationship ends. *Response*, p. 2; citing NRS 608.040-.050. Additionally, Plaintiffs argue  
21 GSR admitted it violated overtime requirements when it sent Mr. Martel and hundreds of  
22 other current and former employees checks for the unpaid overtime but did not pay  
23 continuation wages as mandated by NRS 608.040 and 608.050. *Id.* Plaintiffs assert, based  
24 on what they contend is black letter law, purported union employees are not required to  
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1 exhaust internal union grievance procedures before filing suit. *Response*, p. 12; citing NRS  
2 608.140 and 608.050. Plaintiffs next argue courts consistently find union and non-union  
3 employees can sue for and on behalf of each other when all allege they are victims of  
4 unlawful pay practices. *Response*, p. 13. Plaintiffs state Ms. Jackson-Williams is entitled to  
5 statutory overtime protections because the Culinary CBA is not a valid and operable CBA  
6 since it is an unsigned draft, and even if operable, the CBA does not provide overtime  
7 benefits beyond those conferred by NRS 608.018. *Response*, pp. 17-18. Plaintiffs request  
8 the opportunity to conduct further discovery on whether the Culinary Union and the CBA are  
9 operational if the Court is inclined to hold the CBA is valid. *Response*, p. 17.

12 In its *Reply*, GSR argues Mr. Martel conceded his underlying wage claims are barred  
13 by the applicable statute of limitation, and his derivative waiting time penalty claims under  
14 NRS 608.040 and 608.050 fail because they are contrary to accrual of claims case law and  
15 statutory language. *Reply*, p. 1. GSR argues Courts have repeatedly rejected assertions  
16 similar to Plaintiffs' assertion the Culinary CBA is invalid due to lack of execution. *Reply*, p.  
17 2. GSR further maintains the Culinary CBA has affirmed the validity of the CBA. *Id.* GSR  
18 contends during the entire term of her GSR employment Ms. Jackson-Williams was subject  
19 to the CBA, and the CBA "provides otherwise" for overtime, disqualifying Ms. Jackson-  
20 Williams from receiving overtime compensation. *Reply*, p. 9-10. GSR argues Ms. Jackson-  
21 Williams' claims for overtime are barred both because she did not exhaust the valid and  
22 binding CBA grievance procedures. *Reply*, pp. 12-13. GSR states, pursuant to 29 U.S.C. §  
23 159(a), the Culinary Union is the exclusive representative of the employees and Plaintiffs  
24 have not alleged a breach of the duty of fair representation, thereby conceding Plaintiffs  
25 cannot represent the employees. *Reply*, p. 16. Finally, GSR argues Plaintiffs are not

1 entitled to further discovery under NRCP 56(d) because Plaintiffs failed to provide the  
2 requisite affidavit. *Reply*, p. 17; citing Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872,  
3 265 P.3d 698, 700 (2011) and Bakerink v. Orthopaedic Assocs., Ltd., 94 Nev. 428, 431, 581  
4 P.2d 9, 11 (1978).

## 6 **II. STANDARD OF REVIEW; APPLICABLE LAW AND ANALYSIS**

7 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil  
8 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and  
9 affidavits, if any, that are properly before the court demonstrate that no genuine issue of  
10 material fact exists, and the moving party is entitled to judgment as a matter of law." Cuzze v.  
11 Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). A factual  
12 dispute is genuine when the evidence is such that a rational trier of fact could return a verdict  
13 for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031  
14 (2005). Further, a fact is material if the fact "might affect the outcome of the suit under the  
15 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510  
16 (1986). The pleadings and other proof "must be construed in a light most favorable to the  
17 nonmoving party," who bears the burden to "do more than simply show that there is some  
18 metaphysical doubt as to the operative facts in order to avoid summary judgment" in favor of  
19 the moving party. Id., 121 Nev. at 732, 121 P.3d at 1031. The substantive law controls which  
20 factual disputes are material and will preclude summary judgment; other factual disputes are  
21 irrelevant. Id., 121 Nev. at 731, 121 P.3d at 1031.

22 The manner in which each party may satisfy its burden of production depends on  
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze, 123  
24 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion, that

1 party must present evidence that would entitle it to a judgment as a matter of law in the  
2 absence of contrary evidence. Id. If the nonmoving party will bear the burden of persuasion  
3 at trial, the party moving for summary judgment may satisfy the burden of production in two  
4 ways: (1) the moving party may submit evidence which negates an essential element of the  
5 nonmoving party's claim, or (2) the moving party may merely point out the absence of  
6 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in order to  
7 defeat summary judgment, the nonmoving party must transcend the pleadings and, by  
8 affidavit or other admissible evidence, **introduce specific facts** that show a genuine issue of  
9 material fact. Id. "The non-moving party must not simply rely on the pleadings and must do  
10 more than make 'conclusory allegations [in] an affidavit.'" Choi v. 8<sup>th</sup> Bridge Capital, 2020  
11 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan v. Nat'l Wildlife Fed'n, 497  
12 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex Corp. v. Catrett, 477 U.S. 317,  
13 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment must be granted for the moving  
14 party if the nonmoving party 'fails to make showing sufficient to establish an element essential  
15 to that party's case, and on which that party bears the burden of proof at trial.'" Choi v. 8<sup>th</sup>  
16 Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (citing same).

20 In this case, GSR is the moving party that may submit evidence negating an essential  
21 element of Plaintiffs' claims, point out the absence of evidence, or establish the elements of  
22 a defense. Plaintiffs are the nonmoving party who must introduce specific facts that show a  
23 genuine issue of material fact exists.  
24

25 //

26 //

1 Pursuant to NRCP 56, even if the undisputed factual matters are established, a party  
2 must still establish the party is entitled to judgment as a matter of law. Kuptz-Blinkinsop v.  
3 Blinkinsop, 136 Nev. \_\_\_, \_\_\_, 466 P.3d 1271, 1273 (2020) (citing Wood v. Safeway, Inc.,  
4 121 Nev. at 729, 121 P.3d at 1029 (2005)).  
5

6 **III. FINDINGS OF UNDISPUTED MATERIAL FACT.**

7 The Court finds the following material facts are undisputed:

- 8 1. The *Complaint* was filed in this matter on June 14, 2016.
  - 9 2. GSR is an employer. *FAC*, ¶ 10; *Answer*, ¶ 8.
  - 10 3. Mr. Martel was employed from on or about January 25, 2012 through June  
11 13, 2014. *FAC*, ¶ 20, 34, 49; *Motion*, p. 2; *Response*, p. 6.
  - 12 4. Mr. Martel was employed as an arcade attendant and was not covered by a  
13 union or a collective bargaining agreement. *Response*, p. 7.
  - 14 5. Mr. Martel voluntarily resigned from his employment with GSR on June 14,  
15 2014. Decl. of Eddy Martel-Rodriguez, ¶ 4; *Reply*, p. 3, n.1.
  - 16 6. Mr. Martel's timeclock indicates he clocked into his final shift at GSR at 6:10  
17 p.m. on June 12, 2014. Mr. Martel clocked out on June 13, 2014 at 12:26 a.m. *Motion*, p.  
18 2, Ex. 1, Decl. of Eric Candela; *Response*, p. 6.
  - 19 7. Mr. Martel was paid every two weeks and last paycheck was paid on June 16,  
20 2014. *Reply*, Ex. 1, Decl. of Cynthia Williams, ¶ 3.
  - 21 8. Ms. Jackson-Williams was employed as a guest attendant from April 2014,  
22 through December, 2015. *FAC*, ¶ 6; *Motion*, p. 2; *Response*, p. 7.
  - 23 9. The Culinary CBA is unsigned. *Motion*, p. 7, n.1; *Response*, p. 16; Decl. of  
24 Susan Heaney Hilden, ¶ 2.
- 25  
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1           10.     Article 9.01 of the Culinary CBA provides:

2           The workweek pay period shall be from Friday through Thursday. For  
3           purposes of computing overtime, for an employee scheduled to work five (5)  
4           days in one (1) workweek, any hours in excess of eight (8) hours in a day or  
5           forty (40) hours in a week shall constitute overtime. For an employee  
6           scheduled to work four (4) days in one (1) workweek, any hours worked in  
7           excess of ten (10) hours in a day or forty (40) hours in a week shall constitute  
8           overtime. . . . Employees absent for personal reasons on one (1) or more of  
9           their first five (5) scheduled days of work in their workweek shall work at the  
10          Employee's request on a scheduled day off in the same workweek at straight  
11          time.

12          *Motion*, p. 6; *Motion*, Ex. 2, Decl. of Susan Hilden, Ex. 1; *Response*, pp. 18-19.

13           11.     Pursuant to the Operating Engineers CBA, GSR recognizes the International  
14           Union of Operating Engineers Stationary Local No. 39 AFL-CIO as "the exclusive bargaining  
15           representative for . . . all draftsmen, carpenters, engineers, locksmiths, painters, upholsters,  
16           certified pool operators and engineering department laborers." *Motion*, Ex. 2, Decl. of  
17           Susan Hilden, ¶ 11; *Response*, p. 6.

18           12.     Pursuant to the IATSE CBA, GSR recognizes the International Alliance of  
19           Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the  
20           United States, its Territories and Canada, AFL-CIO, CLC LOCAL Union No. 362 ("IATSE")  
21           as "the Exclusive collective bargaining representative for . . . all entertainment department  
22           employees performing carpentry, electrical, electronic, sound and property work, including  
23           stage hands, stage technicians, stage laborers, lounge technicians, convention technicians,  
24           spotlight operators and technicians, stage electricians, sound personnel, projectionists,  
25           operators of all audio-visual equipment used in connection with the Employer's  
26           entertainment and convention operations and all wardrobe personnel . . ." *Motion*, Ex. 2,  
27           Decl. of Susan Hilden, ¶12; *Response*, p. 6.

28           //

1           13.     The Culinary Union has filed grievances under the Culinary CBA, and  
2 arbitrations have taken place. *Motion*, Ex. 2, Decl. of Susan Heaney Hilden, ¶¶ 3-7; Ex. 3,  
3 Decl. of Larry Montrose, ¶ 5.

4  
5           14.     To the extent any of the following conclusions of law include, or may be  
6 construed to include, findings of fact, they are incorporated here.

7 **IV.     CONCLUSIONS OF LAW.**

8           To the extent any of the foregoing findings of fact constitute, or may be construed  
9 to constitute, conclusions of law they are incorporated here:

10  
11 **A.     STATUTE OF LIMITATION.**

12           1.     The Minimum Wage Act (MWA) guarantees employees payment of a specified  
13 minimum wage and gives an employee whose employer violates the MWA the right to bring  
14 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d  
15 257, 258 (2016).

16  
17           2.     A two-year statute of limitation applies to actions for failure to pay the  
18 minimum wage in violation of the Nevada constitution. Id. at 262.

19           3.     The two-year statute of limitation period applies to NRS 608 statutory wage  
20 claims that are analogous to a cause of action for failure to pay an employee the lawful  
21 minimum wage. Id.

22  
23           4.     NRS 608.040 provides:

24           1.     If an employer fails to pay:

25               (a) Within 3 days after the wages or compensation of a discharged  
employee becomes due; or

26               (b) On the day the wages or compensation is due to an employee who  
27 resigns or quits, the wages or compensation of the employee continues at the  
same rate from the day the employee resigned, quit or was discharged until  
paid or for 30 days, whichever is less.

28           2.     Any employee who secretes or absents himself or herself to avoid  
payment of his or her wages or compensation, or refuses to accept them when



1 fully tendered to him or her, is not entitled to receive the payment thereof for  
2 the time he or she secretes or absents himself or herself to avoid payment.

3 NRS 608.040.

4 5. NRS 608.050 provides:

5 1. Whenever an employer of labor shall discharge or lay off employees  
6 without first paying them the amount of any wages or salary then due them, in  
7 cash and lawful money of the United States, or its equivalent, or shall fail, or  
8 refuse on demand, to pay them in like money, or its equivalent, the amount of  
9 any wages or salary at the time the same becomes due and owing to them  
10 under their contract of employment, whether employed by the hour, day, week  
11 or month, each of the employees may charge and collect wages in the sum  
12 agreed upon in the contract of employment for each day the employer is in  
13 default, until the employee is paid in full, without rendering any service  
14 therefor; but the employee shall cease to draw such wages or salary 30 days  
15 after such default.

16 2. Every employee shall have a lien as provided in NRS 108.221 to  
17 108.246, inclusive, and all other rights and remedies for the protection and  
18 enforcement of such salary or wages as the employee would have been  
19 entitled to had the employee rendered services therefor in the manner as last  
20 employed.

21 NRS 608.050.

22 6. When a derivative claim is dependent on the success of an underlying claim  
23 and the underlying "claim having not been established," then the derivative claim "must fail  
24 as well." Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 222 n.31, 180 P.3d 1172,  
25 1178 n.31 (2008).

26 7. A two-year statute of limitation applies to the claims in this action. Claims  
27 which accrued prior to June 14, 2014 are therefore barred by the statute of limitation. See  
28 *Order Granting, in Part, and Denying, in Part, Motion to Dismiss* pp. 7-11.

8. Mr. Martel maintains his fourth cause of action for waiting time penalties under  
NRS 608.040 and 608.050 is timely because his cause of action did not accrue until thirty  
(30) days after his last day of work.

1           9.       Based on its plain language, NRS 608.050 is inapplicable to Mr. Martel.  
2       Section 608.050 applies to employees who are discharged or laid off by their employer.  
3       See NRS 608.050(1). Mr. Martel resigned from his job.

4           10.      Section 608.040 of the Nevada Revised Statutes does not apply to wages that  
5       are not accrued during the final pay period of the employee.

6           11.      No shift jamming, no off-the-clock banking, and no pre-shift meetings occurred  
7       during Mr. Martel's final pay period. Mr. Martel's last shift ended on June 13, 2014.

8           12.      Therefore, the two-year statute of limitation applies to Mr. Martel's claims.  
9       The *Complaint* was filed on June 14, 2016.

10          13.      NRS 608.040 does not save Mr. Martel's claims. "[W]hen a statute 'is clear on  
11       its face, a court cannot go beyond the statute in determining legislative intent.'" State v.  
12       Lucero, 249 P.3d 1226, 1228 (2011) (citing Robert E. v. Justice Court, 99 Nev. 443, 445  
13       (1983)). The Court finds NRS 608.040 is clear on its face that it does not apply to all wages,  
14       but rather wages due for the pay period before the employee is discharged or quits.  
15       Nothing in the statute indicates the rule applies to previously unpaid wages or exists to  
16       create a cause of action for those wages.

17          14.      The two-year statute of limitation applies to: Plaintiffs' First Cause of Action for  
18       Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016;  
19       Second Cause of Action for Failure to Pay Minimum Wages in Violation of the Nevada  
20       Constitution; Third Cause of Action for Failure to Pay Overtime Wages in Violation of NRS  
21       608.140 and 608.018; and, Fourth Cause of Action for Failure to Timely Pay All Wages Due  
22       and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.

1           15. Defendants met their burden and established their statute of limitation defense  
2 to Plaintiffs' claims as a matter of law.

3           16. Summary judgment should be entered on each of Mr. Martel's claims as they  
4 are time-barred.

5           17. After application of the two-year statute of limitation, Ms. Jackson-Williams'  
6 claims remain for an eighteen-month period only.

7  
8           **B. CBA VALIDITY AND ABILITY TO PROVIDE OTHERWISE FOR OVERTIME**

9           **1. Validity of the CBA**

10           18. The CBA purportedly expired by its own terms on or about May 1, 2011. The  
11 CBA has not been extended by signature, however, GSR contends the CBA has been  
12 extended by ratification.

13           19. Unsigned CBAs have been found valid and operative when an employer has  
14 continued to treat the CBA as binding and effective and employee could not point to  
15 evidence to the contrary. Bloom v. Universal City Studios, 933 F.2d 1013, 1991 WL 80602  
16 at \*1 (9th Cir. 1991) (unpublished); See Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc., 369  
17 U.S. 17, 24 n. 6 (1962) (finding CBA valid even when parties did not negotiate directly and  
18 did not consolidate signatures on one document).

19           20. A union will generally be held defunct if it has ceased to exist as an effective  
20 labor organization and is no long fulfilling responsibilities in administering the contract.  
21 Hershey Chocolate Corp., 121 NLRB 901, 911, 42 LRRM 1460 (1958); see also Pioneer Inn  
22 Associates v. N.L.R.B., 578 F.2d 835, 839-40 (1978) (explaining inactivity, failure to monitor  
23 contract provisions, and failure to pursue grievances may indicate a failure to administer the  
24 contract).

1           21.     Signatures on collective bargaining agreements are “not a prerequisite to  
2 finding an employer bound to that agreement.” Line Const. Ben. Fund v. Allied Elec.  
3 Contractors, Inc., 591 F.3d 576, 580 (7th Cir. 2010); N.L.R.B. v. Electra-Food Mach. Inc.,  
4 621 F.2d 956, 958 (9th Cir. 1980) (holding oral agreements are sufficient to create binding  
5 collective bargaining agreements even when written agreement is unsigned); N.L.R.B. v.  
6 Haberman Const. Co., 641 F.2d 351, 356 (5th Cir. 1981) (en banc) (“[A] union and  
7 employer’s adoption of a labor contract is not dependent on the reduction to writing of their  
8 intention to be bound”).  
9  
10

11           22.     If the union and the employer continue to operate as if the CBA is operative,  
12 the CBA is binding. Here, the union and GSR engaged in arbitration and negotiation when  
13 mandated by the CBA. GSR continued to negotiate and arbitrate with the union on multiple  
14 occasions. For example, Mr. Montrose confirmed he interacts with the Culinary Union  
15 Representative Nicolaza De La Puente weekly and he was notified of at least two different  
16 grievances in 2015. *Motion*, Decl. of Larry Montrose, Ex B., Ex. C. The CBA was “ratified  
17 by the Union on November 17, 2011, and it was in effect through March 10, 2018, when a  
18 subsequent Culinary CBA was ratified.” *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. An  
19 arbitration was held on August 25, 2016, in which the parties introduced the CBA as Joint  
20 Exhibit 1. *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. Following the August 25, 2016,  
21 arbitration, the Culinary Union submitted a Post-Hearing Brief dated October 24, 2016 in  
22 which the Union states, “Local 226 has been party to three successive collective-bargaining  
23 agreements at the hotel casino that is now known as the Grand Sierra Resort.” *Id.* Plaintiffs  
24 contend the CBA expired in May of 2011 but provide the Court with no evidence to dispute  
25  
26  
27  
28

1 that the union and the GSR continued to treat the CBA as binding. Undisputed evidence  
2 confirms the CBA was valid and operative.

3       **2.     The CBA “provides otherwise” for overtime**

4  
5       23.     NRS 608.018(1)-(2) governs compensation for overtime and reads:

6       1.     An employer shall pay 1 1/2 times an employee's regular wage rate  
7 whenever an employee who receives compensation for employment at a rate  
8 less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:

9       (a) More than 40 hours in any scheduled week of work; or

10       (b) More than 8 hours in any workday unless by mutual agreement the  
11 employee works a scheduled 10 hours per day for 4 calendar days within any  
12 scheduled week of work.

13       2.     An employer shall pay 1 1/2 times an employee's regular wage rate  
14 whenever an employee who receives compensation for employment at a rate  
15 not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works  
16 more than 40 hours in any scheduled week of work.

17       NRS 608.018(1)-(2).

18       24.     Section 608.018(3) of the Nevada Revised Statutes provides, “[t]he provisions  
19 of subsections 1 and 2 do not apply to . . . (e) Employees covered by collective bargaining  
20 agreements which provide otherwise for overtime . . .” NRS 608.018(3) (emphasis added).

21       25.     The CBA provides:

22       The workweek pay period shall be from Friday through Thursday. For the  
23 purposes of computing overtime, for an employee scheduled to work five (5)  
24 days in one (1) workweek, any hours in excess of eight (8) hours in a day or  
25 forty (40) hours in a week shall constitute overtime. For an employee  
26 scheduled to work four (4) days in one (1) workweek, any hours worked in  
27 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute  
28 overtime. Overtime shall be effective and paid only after the total number of  
hours not worked due to early ours is first subtracted from the total number of  
hours actually worked per shift, per workweek. Overtime shall not be paid  
under this Section for more than one (1) reason for the same hours worked.  
Employees absent for personal reasons on one (1) or more of their first five (5)  
scheduled days of work in their workweek shall work at the Employer’s request  
on a scheduled day off in the same workweek at straight time. If the employer  
anticipates such scheduling, the Employer provide five (5) days’ advance  
notice.

1 This provision will remain in effect for the duration of this Agreement.  
2 However, at the expiration of the Agreement, the Employer shall have the  
3 right to compute and pay overtime in accordance with the provisions of  
4 existing federal and state law, and Union employees shall not have the right  
to overtime pay above and beyond the applicable federal and state law  
requirements.

5 See Motion, Ex. 2A, p. 15.

6 26. CBAs “provide otherwise” for overtime payments when the CBA “contains a  
7 negotiated provision on the same subject but different from the statutory provision.”  
8 Firestone v. Southern California Gas Co., 219 F.3d 1063, 1067, 164 L.R.R.M. 2897, 2897  
9 (9th Cir. 2000); Jacobs v. Mandalay Corp., 378 F. App’x 685, 687 (9th Cir. 2010) (“[S]ection  
10 608.018 exempts from coverage those employees ‘covered by collective bargaining  
11 agreements which provide otherwise for overtime.’”).  
12

13 27. The instant CBA “provides otherwise” for overtime. The CBA provides  
14 otherwise for overtime because there are differences in both the practical effects of the  
15 overtime provisions in NRS 608.018 and in the CBA’s overtime provisions, as well as the  
16 textual provisions. For example, NRS 608.018(1) provides that an employer shall pay 1 1/2  
17 times the employee’s regular wage when the employee works more than 40 hours in a week  
18 or more than 8 hours in a day. The CBA does not specify what the pay rate shall be.  
19 Additionally, the CBA provides for overtime regardless of the employee’s wage, while NRS  
20 608.018 only mandates overtime for employees making more than 1 1/2 the minimum wage.  
21 NRS 608.018 provides overtime regardless of how many days are worked in a week, while  
22 the CBA allows overtime only when employees work five days in one workweek. NRS  
23 608.018 does not limit overtime if an employee misses a scheduled day and works an  
24 alternate day, however, the CBA does. Accordingly, the CBA “provides otherwise” for  
25 overtime.  
26  
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28

1           28.     The CBA “provides otherwise” for Ms. Jackson-Williams’ claim for overtime  
2 and NRS 608.018 does not provide a legal basis for her claim.

3           **3.     Grievance Procedures of the Culinary CBA**

4           29.     Section 301 of the Labor Management Relations Act states:

5                 Suits for violation of contracts between an employer and a labor organization  
6 representing employees in an industry affecting commerce ... may be brought  
7 in any district court of the United States having jurisdiction of the parties....

8 Labor Management Relations Act of 1947 § 301(a), 29 U.S.C. § 185(a) (1982).

9           30.     Employees may pursue claims for unpaid wages through a private cause of  
10 action and without enforcing the claim through the Labor Commissioner. Neville v. Eighth  
11 Judicial Dist. Court in & for Cty. of Clark, 133 Nev. 777, 782, 406 P.3d 499, 504 (2017).

12           31.     State law rights and obligations that do not exist independently of private  
13 agreements can be waived or altered by agreement as a result and are pre-empted by  
14 those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d  
15 821, 824 (1986) (citing Allis Chalmers v. Lueck, 471 U.S. 202, 105 S.Ct. 1904 (1985)).

16           32.     Workers do not have to submit to arbitration procedures when redressing  
17 grievances because a CBA provides contractual rights, but workers may have an  
18 independent statutory right to enforce individual rights. Albertson’s, Inc. v. United Food &  
19 Commercial Workers Union, ALF-CIO & CLC, 157 F.3d 758, 762 (9th Cir.).

20           33.     Whether Ms. Jackson-Williams must follow the grievance procedures  
21 contained in the CBA depends on whether she has an independent statutory right to enforce  
22 her claims for wages and overtime outside of the CBA. Ms. Jackson-Williams brought  
23 claims for Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and  
24 608.016, Failure to Pay Overtime Wages in Violation of the Nevada Constitution, Failure to  
25 Pay Minimum Wages in Violation of NRS 608.140 and 608.018, and Failure to Pay All



1 Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608-040-050. The  
2 State of Nevada provides independent statutory rights to each of Ms. Jackson-Williams'  
3 claims through the Nevada Revised Statutes and the Nevada Constitution. Albertson's Inc.  
4 explains, "in filing a lawsuit under [a statute], an employee asserts independent statutory  
5 rights . . . The distinctly separate nature of these contractual and statutory rights is not  
6 vitiated merely because both were violated as a result of the same factual occurrence." 157  
7 F.3d at 761. Since there are state-law rights at issue, Ms. Jackson-Williams' claims are not  
8 preempted, and the claims are not mandated to proceed through the grievance procedure of  
9 the CBA.  
10  
11

12 **4. Lack of Standing to Represent Union Employees**

13 34. Section 159(a) of the United States Code states:

14 Representatives designated or selected for the purposes of collective  
15 bargaining by the majority of the employees in a unit appropriate for such  
16 purposes, shall be the exclusive representatives of all the employees in  
17 such unit for the purposes of collective bargaining in respect to rates of pay,  
wages, hours of employment, or other conditions of employment.

18 29 U.S.C. § 159(a).

19 35. Baristas, bartenders, and cocktail servers are represented by the Culinary  
20 CBA; construction workers are covered by the Operating Engineers CBA; and, technicians  
21 are represented by the AFL-CIO Local Union. Plaintiffs, as members of the "shift jamming  
22 class" attempt to represent union members from other sub-classes.  
23

24 36. Employees may bring an action against an employer without exhausting  
25 contractual remedies, but the employees must "prove that the union as bargaining agent  
26 breached its duty of fair representation in its handling of the employee's grievance." Vaca v.  
27 Sipes, 386 U.S. 171, 186, 87 S.Ct. 903, 914 (1967).  
28

1           37.     When employees sue to vindicate “uniquely personal rights” as opposed to  
2 rights reserved to unions like picketing, renegotiating a contract, or protesting relocation, the  
3 employees have standing to sue on their own behalf and on behalf of other union members.  
4  
5 Lucas v. Bechtel Corp., 633 F.2d 757, 759 (9th Cir. 1980) (citing Hines v. Anchor Motor  
6 Freight, Inc., 424 U.S. 554, 562, 96 S.Ct. 1048, 1055 (1976)).

7           38.     In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh Circuit  
8 held that where a “suit is at its core about the adequacy of the wages [the employer] pays,”  
9 individual employees may not represent union workers in a class action when the union has  
10 not breached its duty of fair representation.” The court reasoned union workers “have a  
11 representative—one that under the NLRA is supposed to be ‘exclusive’ with respect to  
12 wages” and therefore “Plaintiffs’ request to proceed on behalf of a class of all workers  
13 shows that they seek to usurp the union’s role.” Id. at 686, 690.

14  
15           39.     Plaintiffs do not assert the Union has breached its duty of fair representation.  
16 The CBA is valid and operative. Plaintiffs cannot represent those other union members who  
17 are represented by separate unions without asserting those union representatives breached  
18 their duty of fair representation.  
19

20           **C.     PLAINTIFFS’ REQUEST FOR ADDITIONAL DISCOVERY**  
21           **PURSUANT TO NRCP 56.**

22           40.     Nevada Rules of Civil Procedure Rule 56 provides:

- 23           (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant  
24 shows by affidavit or declaration that, for specified reasons, it cannot  
25 present facts essential to justify its opposition, the court may:  
26           (1) defer considering the motion or deny it;  
27           (2) allow time to obtain affidavits or declarations or to take discovery; or  
28           (3) issue any other appropriate order.

NRCP 56(d).

41. A party opposing summary judgment pursuant to NRCP 56(d) has the burden of affirmatively demonstrating by a good-faith affidavit (1) the identification of the specific facts that further discovery would reveal; (2) the specific reasons why such evidence is presently unavailable; and (3) how those facts would preclude summary judgment. Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortgage Corp., 525 F.3d 822, 827 (9th Cir. 2008); Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 657, 669-70, 262 P.3d 705, 714 (2011).

42. Plaintiffs request additional discovery to ascertain whether the CBA is valid or not. Plaintiffs have not provided an affidavit, have not articulated the specific reasons why the evidence they need is unavailable to them, and have not stated how those facts would preclude summary judgment.

## V. CONCLUSION AND ORDER.

Based on the foregoing findings of fact and conclusions of law and good cause appearing therefore,

IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against the Plaintiffs.

DATED this 2nd day of November, 2020.

DISTRICT JUDGE

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*Attorneys for Plaintiffs-Petitioners*

**IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

EDDY MARTEL (also known as MARTEL-  
RODRIGUEZ), MARY ANNE CAPILLA,  
JANICE JACKSON-WILLIAMS, and  
WHITNEY VAUGHAN on behalf of  
themselves and all others similarly situated,

Plaintiffs-Appellants,

HG STAFFING, LLC, MEI-GSR HOLDINGS  
LLC d/b/a GRAND SIERRA RESORT

Defendants-Respondents

Case No.: 16-cv-01264

**PLAINTIFFS'-PETITIONERS' NOTICE  
OF APPEAL PURSUANT TO NRAP  
3(c)**

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN THAT Plaintiffs-Petitioners EDDY MARTEL (also known as MARTEL-RODRIGUEZ), MARY ANNE CAPILLA, JANICE JACKSON-WILLIAMS, and WHITNEY VAUGHAN ("Plaintiffs-Petitioners") on behalf of themselves and all others similarly situated, hereby appeal to the Supreme Court of Nevada from the Second Judicial District Court's November 2, 2020 Order and the Second Judicial District Court's June 7, 2019 Order.

1. A copy of the 11/2/20 Order Granting Motion for Summary Judgment is attached as Exhibit 1.
2. A copy of the 6/7/19 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss is as Exhibit 2.

**AFFIRMATION**

*The undersigned does hereby affirm that the proceeding document to be filed in the Second Judicial District Court in the State of Nevada, County of Washoe, does not contain the social security number of any person.*

DATED: November 25, 2020

Respectfully Submitted,

THIERMAN BUCK LLP

/s/Leah L. Jones

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Joshua R. Hendrickson

*Attorneys for Plaintiffs-Petitioners*

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**INDEX OF EXHIBITS**

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| 2.          | June 7, 2019 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss | 16    |

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that on this date I electronically filed the foregoing **PLAINTIFFS'-PETITIONERS' NOTICE OF APPEAL PURSUANT TO NRAP 3(c)** with the Clerk of the Court by using the e-Flex filing system which will send a notice of electronic filing to the following:

H. JOHNSON, ESQ. for HG STAFFING, LLC, et al  
SUSAN HILDEN, ESQ. for HG STAFFING, LLC, et al

Pursuant to NRCP 5(b), I hereby further certify that service of the foregoing was also made by depositing a true and correct copy of the same for mailing, first class mail, postage prepaid thereon, at Reno, Nevada to the following:

Chris Davis, Esq.  
2500 East Second Street  
Reno, NV 89595

*Attorney for Defendants*

DATED this 25<sup>th</sup> day of November, 2020

/s/ Brittany Manning  
An Employee of Thierman Buck LLP



FILED  
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2020-11-25 04:29:14 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8179170 v. Leri

# EXHIBIT 1

*November 2, 2020 Order Granting  
Motion for Summary Judgment*

# EXHIBIT 1

1 CODE NO. 3370

2  
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5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7  
8 IN AND FOR THE COUNTY OF WASHOE

9  
10 EDDY MARTEL (also known as MARTEL-  
11 RODRIGUEZ), MARY ANNE CAPILLA,  
12 JANICE JACKSON-WILLIAMS and WHITNEY  
VAUGHAN on behalf of themselves and all  
others similarly situated,

Case No. CV16-01264

Dept. No. 6

13 Plaintiffs,

14 vs.

15  
16 HG STAFFING, LLC, MEI-GSR HOLDINGS,  
17 LLC d/b/a GRAND SIERRA RESORT, and  
DOES 1 through 50, inclusive,

18 Defendants.

19 \_\_\_\_\_/  
20  
21 **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

22 Before this Court is the *Defendants' Motion for Summary Judgment, or in the*  
23 *Alternative, Summary Adjudication ("Motion")* filed by Defendants HG STAFFING, LLC and  
24 MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT (collectively, "GSR" unless  
25 individually referenced), by and through their counsel, Cohen|Johnson|Parker|Edwards.

26 //

27  
28 //

1 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),  
2 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-  
3 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of  
4 themselves and all others similarly situated, filed *Plaintiffs' Response to Defendants' Motion*  
5 *for Summary Judgment/Summary Adjudication* ("Response") by and through their counsel,  
6 Thierman Buck, LLP. GSR filed its *Reply in Support of Defendants' Motion for Summary*  
7 *Judgment, or in the Alternative, Summary Adjudication* ("Reply") and submitted the matter  
8 for decision thereafter.  
9

10  
11 **I. FACTUAL AND PROCEDURAL HISTORY.**

12 This action arises out of an employment dispute between Plaintiffs, employees, and  
13 GSR, employer, regarding wages paid by GSR to Plaintiffs and similarly situated  
14 employees. Mr. Martel was employed as an attendant in the Bowling Center. Ms. Capilla  
15 was employed as a dealer. Ms. Jackson-Williams was employed as a room attendant. And,  
16 Ms. Vaughan was employed as a dancing dealer (part cards dealer, part go-go dancer).  
17 See *Class Action Complaint* ("Complaint") and *First Amended Class Action Complaint*  
18 *("FAC")*, generally. On June 14, 2016, Plaintiffs filed their *Complaint* alleging GSR  
19 maintained the following policies, practices, and procedures which required various  
20 employees to perform work activities without compensation:  
21

- 22  
23 (1) GSR's Cash Bank Policy;  
24 (2) Dance Class Policy;  
25 (3) Room Attendant Pre-Shift Policy;  
26 (4) Pre-Shift Meeting Policy;  
27

28 //

1 (5) Uniform Policy; and,

2 (6) Shift Jamming Policy.

3 *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs assert four (4) claims for relief  
4 against GSR:  
5

6 (1) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and  
7 608.016;

8 (2) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;

9 (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,  
10

11 (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant  
12 to NRS 608.140 and 608.020-.050.

13 Id., pp. 11-15.

14 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*  
15 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient  
16 information to support their claims and granted GSR's *Motion to Dismiss*. *Order*, pp. 9-10.  
17 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*  
18 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*  
19 *("Motion for Reconsideration")* requesting the Court reconsider its *Order* pursuant to NRCP  
20 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*  
21 *Reconsideration* on January 9, 2019 and denied Plaintiffs' request on the grounds they  
22 failed to state a claim but granted Plaintiffs leave to amend their *Complaint*. *Order Re*  
23 *Motion for Reconsideration*, pp. 8-9.  
24  
25

26 //

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1 On January 29, 2019, Plaintiffs filed their *FAC* asserting the same four (4) claims.  
2 Thereafter, GSR filed its *Motion to Dismiss First Amended Complaint* (“*Motion to Dismiss*”),  
3 requesting this Court dismiss the *FAC* pursuant to NRCP 12(b)(5). *Motion to Dismiss*, p. 2.  
4 GSR argued the claims asserted in the *FAC* “have no more merit than Plaintiffs’ original  
5 claims.” *Motion to Dismiss*, p. 2. On June 7, 2019, the Court entered its *Order Granting, in*  
6 *Part, and Denying, in Part, Motion to Dismiss* (“*MTD Order*”) concluding a two-year statute  
7 of limitation applies to the Plaintiffs’ claims. *MTD Order*, p. 7. As such, the Court dismissed  
8 all of Ms. Capilla and Ms. Vaughan’s claims, all but one (1) month of Mr. Martel’s claims,  
9 and all but eighteen (18) months of Ms. Jackson-Williams’ claims. *MTD Order*, p. 14.

12 On May 23, 2019, GSR filed its *Motion for Summary Judgment on all Claims*  
13 *Asserted by Plaintiffs Martel, Capilla and Vaugh (sic)* (“*First MSJ*”) and argued Plaintiffs  
14 claims are barred by claim preclusion. *First MSJ*, p. 4.

16 On June 28, 2019, GSR filed its *Answer to First Amended Class Action Complaint*  
17 (“*Answer*”). In addition to admissions and denials to Plaintiffs’ allegations in the *FAC*, GSR  
18 asserted, among other affirmative defenses: failure to state a claim; claims are barred, in  
19 whole or in part, by the applicable statute of limitations; and, claims are barred due to GSR’s  
20 full performance of underlying obligations. *Answer*, generally.

22 On July 8, 2019, GSR filed *Defendants’ Second Motion for Summary Judgment as to*  
23 *Plaintiff Martel; Motion for Summary Adjudication on Plaintiffs’ Lack of Standing to*  
24 *Represent Union Employees; and Motion for Summary Judgment as to Plaintiff Jackson-*  
25 *Williams* (“*Second MSJ*”). GSR made the following arguments: (1) Mr. Martel’s claims are  
26 time-barred; (2) Plaintiffs lack standing to represent union employees who are exclusively  
27 represented by their unions; (3) Ms. Jackson-Williams’ claims are barred for failing to  
28

1 exhaust grievance procedures of the Culinary Collective Bargaining Agreement (“CBA”)  
2 and/or based on federal preemption; and, (4) Ms. Jackson-Williams’ claim for overtime is  
3 barred pursuant to NRS 608.018 because the CBA provides otherwise for overtime. See  
4 *Second MSJ*, generally.

5  
6 On July 9, 2019, before this Court rendered its decision on the *First MSJ* and *Second*  
7 *MSJ*, GSR filed its *Notice of Filing Petition for Writ of Mandamus and/or Prohibition*  
8 (*“Petition”*) with the Supreme Court of Nevada. In the *Petition*, GSR argued the dismissal of  
9 Plaintiffs’ first, third, and fourth claims for relief is mandatory on the grounds: Plaintiffs failed  
10 to exhaust administrative remedies as required by NRS Chapter 607; legislative mandated  
11 remedies must be exhausted despite an implied private right of action; and, NRS 607.215  
12 requires Plaintiffs exhaust administrative remedies before pursuing wage claims under NRS  
13 608.005 to 608.195. See *Petition*, generally.

14  
15 This Court entered its *Order Re Stipulation to Stay All Proceedings and Toll of the*  
16 *Five Year Rule* (*“Stipulation”*) on July 17, 2019 and withdrew GSR’s pending motions for  
17 summary judgment from submission, without prejudice, allowing renewal upon the Supreme  
18 Court of Nevada’s decision. *Stipulation*, p. 9.

19  
20 On May 7, 2020, the Supreme Court of Nevada entered its *Order Denying Petition*.  
21 The Supreme Court of Nevada reasoned Neville v. Eighth Judicial Dist. Court held, by  
22 necessary implication, exhaustion of administrative remedies is not required before filing an  
23 unpaid-wage claim in district court. 133 Nev. 77, 406 P.3d 499 (2017).

24  
25 On June 9, 2020, GSR filed the instant *Motion* and renewed the claims presented in  
26 the *Second MSJ* filed on May 23, 2019. GSR asserts Mr. Martel’s claims are time-barred  
27 because the Court’s June 7, 2019, *Order Granting, in Part, and Denying, in Part, Motion to*  
28

1 *Dismiss* found a two-year statute of limitations applies, barring claims accruing prior to June  
2 14, 2014. Mr. Martel worked his last shift on June 12, 2014. *Motion*, p. 3. GSR argues Ms.  
3 Jackson-Williams' claims are barred for failing to exhaust grievance procedures of the  
4 Culinary CBA and/or based on federal preemption because state law rights that can be  
5 altered by CBAs are preempted by CBAs and employees must make use of the grievance  
6 procedures in the CBAs or the claims will be dismissed as preempted by federal law.  
7 *Motion*, p. 4; citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-20 (1985); MGM  
8 Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d 821, 824 (1986). GSR  
9 contends Ms. Jackson-Williams' claim for overtime is barred because Article 9.01 of the  
10 CBA entitled, "WORK, SHIFTS, WORKWEEK, AND OVERTIME," "provides otherwise" for  
11 overtime, therefore exempting Ms. Jackson-Williams from the overtime provisions in  
12 Sections 1 and 2 of NRS 608.018. *Motion*, pp. 5-6. GSR argues the Plaintiffs lack standing  
13 to represent union employees who are exclusively represented by their respective unions.  
14 This is so, GSR maintains, because they are not in the same unions and the bargaining  
15 representatives of each union have not been given the opportunity to be present. *Motion*, p.  
16 7; citing 29 U.S.C. § 159(a); Vaca v. Sipes, 386 U.S. 171, 186 (1967).

17  
18 In the *Response*, Plaintiffs argue Mr. Martel's claim is not time-barred because an  
19 employee's claim for unpaid wages accrues thirty (30) days after the employment  
20 relationship ends. *Response*, p. 2; citing NRS 608.040-.050. Additionally, Plaintiffs argue  
21 GSR admitted it violated overtime requirements when it sent Mr. Martel and hundreds of  
22 other current and former employees checks for the unpaid overtime but did not pay  
23 continuation wages as mandated by NRS 608.040 and 608.050. *Id.* Plaintiffs assert, based  
24 on what they contend is black letter law, purported union employees are not required to  
25  
26  
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28

1 exhaust internal union grievance procedures before filing suit. *Response*, p. 12; citing NRS  
2 608.140 and 608.050. Plaintiffs next argue courts consistently find union and non-union  
3 employees can sue for and on behalf of each other when all allege they are victims of  
4 unlawful pay practices. *Response*, p. 13. Plaintiffs state Ms. Jackson-Williams is entitled to  
5 statutory overtime protections because the Culinary CBA is not a valid and operable CBA  
6 since it is an unsigned draft, and even if operable, the CBA does not provide overtime  
7 benefits beyond those conferred by NRS 608.018. *Response*, pp. 17-18. Plaintiffs request  
8 the opportunity to conduct further discovery on whether the Culinary Union and the CBA are  
9 operational if the Court is inclined to hold the CBA is valid. *Response*, p. 17.

12 In its *Reply*, GSR argues Mr. Martel conceded his underlying wage claims are barred  
13 by the applicable statute of limitation, and his derivative waiting time penalty claims under  
14 NRS 608.040 and 608.050 fail because they are contrary to accrual of claims case law and  
15 statutory language. *Reply*, p. 1. GSR argues Courts have repeatedly rejected assertions  
16 similar to Plaintiffs' assertion the Culinary CBA is invalid due to lack of execution. *Reply*, p.  
17 2. GSR further maintains the Culinary CBA has affirmed the validity of the CBA. *Id.* GSR  
18 contends during the entire term of her GSR employment Ms. Jackson-Williams was subject  
19 to the CBA, and the CBA "provides otherwise" for overtime, disqualifying Ms. Jackson-  
20 Williams from receiving overtime compensation. *Reply*, p. 9-10. GSR argues Ms. Jackson-  
21 Williams' claims for overtime are barred both because she did not exhaust the valid and  
22 binding CBA grievance procedures. *Reply*, pp. 12-13. GSR states, pursuant to 29 U.S.C. §  
23 159(a), the Culinary Union is the exclusive representative of the employees and Plaintiffs  
24 have not alleged a breach of the duty of fair representation, thereby conceding Plaintiffs  
25 cannot represent the employees. *Reply*, p. 16. Finally, GSR argues Plaintiffs are not



1 entitled to further discovery under NRCP 56(d) because Plaintiffs failed to provide the  
2 requisite affidavit. *Reply*, p. 17; citing Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872,  
3 265 P.3d 698, 700 (2011) and Bakerink v. Orthopaedic Assocs., Ltd., 94 Nev. 428, 431, 581  
4 P.2d 9, 11 (1978).

## 6 **II. STANDARD OF REVIEW; APPLICABLE LAW AND ANALYSIS**

7 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil  
8 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and  
9 affidavits, if any, that are properly before the court demonstrate that no genuine issue of  
10 material fact exists, and the moving party is entitled to judgment as a matter of law." Cuzze v.  
11 Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). A factual  
12 dispute is genuine when the evidence is such that a rational trier of fact could return a verdict  
13 for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031  
14 (2005). Further, a fact is material if the fact "might affect the outcome of the suit under the  
15 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510  
16 (1986). The pleadings and other proof "must be construed in a light most favorable to the  
17 nonmoving party," who bears the burden to "do more than simply show that there is some  
18 metaphysical doubt as to the operative facts in order to avoid summary judgment" in favor of  
19 the moving party. Id., 121 Nev. at 732, 121 P.3d at 1031. The substantive law controls which  
20 factual disputes are material and will preclude summary judgment; other factual disputes are  
21 irrelevant. Id., 121 Nev. at 731, 121 P.3d at 1031.

22 The manner in which each party may satisfy its burden of production depends on  
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze, 123  
24 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion, that

1 party must present evidence that would entitle it to a judgment as a matter of law in the  
2 absence of contrary evidence. Id. If the nonmoving party will bear the burden of persuasion  
3 at trial, the party moving for summary judgment may satisfy the burden of production in two  
4 ways: (1) the moving party may submit evidence which negates an essential element of the  
5 nonmoving party's claim, or (2) the moving party may merely point out the absence of  
6 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in order to  
7 defeat summary judgment, the nonmoving party must transcend the pleadings and, by  
8 affidavit or other admissible evidence, **introduce specific facts** that show a genuine issue of  
9 material fact. Id. "The non-moving party must not simply rely on the pleadings and must do  
10 more than make 'conclusory allegations [in] an affidavit.'" Choi v. 8<sup>th</sup> Bridge Capital, 2020  
11 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan v. Nat'l Wildlife Fed'n, 497  
12 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex Corp. v. Catrett, 477 U.S. 317,  
13 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment must be granted for the moving  
14 party if the nonmoving party 'fails to make showing sufficient to establish an element essential  
15 to that party's case, and on which that party bears the burden of proof at trial.'" Choi v. 8<sup>th</sup>  
16 Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (citing same).

17  
18  
19  
20 In this case, GSR is the moving party that may submit evidence negating an essential  
21 element of Plaintiffs' claims, point out the absence of evidence, or establish the elements of  
22 a defense. Plaintiffs are the nonmoving party who must introduce specific facts that show a  
23 genuine issue of material fact exists.  
24

25 //

26 //

1 Pursuant to NRCP 56, even if the undisputed factual matters are established, a party  
2 must still establish the party is entitled to judgment as a matter of law. Kuptz-Blinkinsop v.  
3 Blinkinsop, 136 Nev. \_\_\_, \_\_\_, 466 P.3d 1271, 1273 (2020) (citing Wood v. Safeway, Inc.,  
4 121 Nev. at 729, 121 P.3d at 1029 (2005)).

6 **III. FINDINGS OF UNDISPUTED MATERIAL FACT.**

7 The Court finds the following material facts are undisputed:

- 8 1. The *Complaint* was filed in this matter on June 14, 2016.
- 9 2. GSR is an employer. *FAC*, ¶ 10; *Answer*, ¶ 8.
- 10 3. Mr. Martel was employed from on or about January 25, 2012 through June  
11 13, 2014. *FAC*, ¶ 20, 34, 49; *Motion*, p. 2; *Response*, p. 6.
- 12 4. Mr. Martel was employed as an arcade attendant and was not covered by a  
13 union or a collective bargaining agreement. *Response*, p. 7.
- 14 5. Mr. Martel voluntarily resigned from his employment with GSR on June 14,  
15 2014. Decl. of Eddy Martel-Rodriguez, ¶ 4; *Reply*, p. 3, n.1.
- 16 6. Mr. Martel's timeclock indicates he clocked into his final shift at GSR at 6:10  
17 p.m. on June 12, 2014. Mr. Martel clocked out on June 13, 2014 at 12:26 a.m. *Motion*, p.  
18 2, Ex. 1, Decl. of Eric Candela; *Response*, p. 6.
- 19 7. Mr. Martel was paid every two weeks and last paycheck was paid on June 16,  
20 2014. *Reply*, Ex. 1, Decl. of Cynthia Williams, ¶ 3.
- 21 8. Ms. Jackson-Williams was employed as a guest attendant from April 2014,  
22 through December, 2015. *FAC*, ¶ 6; *Motion*, p. 2; *Response*, p. 7.
- 23 9. The Culinary CBA is unsigned. *Motion*, p. 7, n.1; *Response*, p. 16; Decl. of  
24 Susan Heaney Hilden, ¶ 2.

1        10.     Article 9.01 of the Culinary CBA provides:

2        The workweek pay period shall be from Friday through Thursday. For  
3        purposes of computing overtime, for an employee scheduled to work five (5)  
4        days in one (1) workweek, any hours in excess of eight (8) hours in a day or  
5        forty (40) hours in a week shall constitute overtime. For an employee  
6        scheduled to work four (4) days in one (1) workweek, any hours worked in  
7        excess of ten (10) hours in a day or forty (40) hours in a week shall constitute  
8        overtime. . . . Employees absent for personal reasons on one (1) or more of  
9        their first five (5) scheduled days of work in their workweek shall work at the  
10       Employee's request on a scheduled day off in the same workweek at straight  
11       time.

12       *Motion*, p. 6; *Motion*, Ex. 2, Decl. of Susan Hilden, Ex. 1; *Response*, pp. 18-19.

13       11.     Pursuant to the Operating Engineers CBA, GSR recognizes the International  
14       Union of Operating Engineers Stationary Local No. 39 AFL-CIO as "the exclusive bargaining  
15       representative for . . . all draftsmen, carpenters, engineers, locksmiths, painters, upholsters,  
16       certified pool operators and engineering department laborers." *Motion*, Ex. 2, Decl. of  
17       Susan Hilden, ¶ 11; *Response*, p. 6.

18       12.     Pursuant to the IATSE CBA, GSR recognizes the International Alliance of  
19       Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the  
20       United States, its Territories and Canada, AFL-CIO, CLC LOCAL Union No. 362 ("IATSE")  
21       as "the Exclusive collective bargaining representative for . . . all entertainment department  
22       employees performing carpentry, electrical, electronic, sound and property work, including  
23       stage hands, stage technicians, stage laborers, lounge technicians, convention technicians,  
24       spotlight operators and technicians, stage electricians, sound personnel, projectionists,  
25       operators of all audio-visual equipment used in connection with the Employer's  
26       entertainment and convention operations and all wardrobe personnel . . ." *Motion*, Ex. 2,  
27       Decl. of Susan Hilden, ¶12; *Response*, p. 6.

28       //

1           13.     The Culinary Union has filed grievances under the Culinary CBA, and  
2 arbitrations have taken place. *Motion*, Ex. 2, Decl. of Susan Heaney Hilden, ¶¶ 3-7; Ex. 3,  
3 Decl. of Larry Montrose, ¶ 5.

4  
5           14.     To the extent any of the following conclusions of law include, or may be  
6 construed to include, findings of fact, they are incorporated here.

7 **IV.     CONCLUSIONS OF LAW.**

8           To the extent any of the foregoing findings of fact constitute, or may be construed  
9 to constitute, conclusions of law they are incorporated here:

10  
11 **A.     STATUTE OF LIMITATION.**

12           1.     The Minimum Wage Act (MWA) guarantees employees payment of a specified  
13 minimum wage and gives an employee whose employer violates the MWA the right to bring  
14 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d  
15 257, 258 (2016).

16  
17           2.     A two-year statute of limitation applies to actions for failure to pay the  
18 minimum wage in violation of the Nevada constitution. Id. at 262.

19           3.     The two-year statute of limitation period applies to NRS 608 statutory wage  
20 claims that are analogous to a cause of action for failure to pay an employee the lawful  
21 minimum wage. Id.

22  
23           4.     NRS 608.040 provides:

24           1.     If an employer fails to pay:

25               (a) Within 3 days after the wages or compensation of a discharged  
employee becomes due; or

26               (b) On the day the wages or compensation is due to an employee who  
27 resigns or quits, the wages or compensation of the employee continues at the  
same rate from the day the employee resigned, quit or was discharged until  
paid or for 30 days, whichever is less.

28           2.     Any employee who secretes or absents himself or herself to avoid  
payment of his or her wages or compensation, or refuses to accept them when

1 fully tendered to him or her, is not entitled to receive the payment thereof for  
2 the time he or she secretes or absents himself or herself to avoid payment.

3 NRS 608.040.

4 5. NRS 608.050 provides:

5 1. Whenever an employer of labor shall discharge or lay off employees  
6 without first paying them the amount of any wages or salary then due them, in  
7 cash and lawful money of the United States, or its equivalent, or shall fail, or  
8 refuse on demand, to pay them in like money, or its equivalent, the amount of  
9 any wages or salary at the time the same becomes due and owing to them  
10 under their contract of employment, whether employed by the hour, day, week  
11 or month, each of the employees may charge and collect wages in the sum  
12 agreed upon in the contract of employment for each day the employer is in  
13 default, until the employee is paid in full, without rendering any service  
14 therefor; but the employee shall cease to draw such wages or salary 30 days  
15 after such default.

16 2. Every employee shall have a lien as provided in NRS 108.221 to  
17 108.246, inclusive, and all other rights and remedies for the protection and  
18 enforcement of such salary or wages as the employee would have been  
19 entitled to had the employee rendered services therefor in the manner as last  
20 employed.

21 NRS 608.050.

22 6. When a derivative claim is dependent on the success of an underlying claim  
23 and the underlying "claim having not been established," then the derivative claim "must fail  
24 as well." Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 222 n.31, 180 P.3d 1172,  
25 1178 n.31 (2008).

26 7. A two-year statute of limitation applies to the claims in this action. Claims  
27 which accrued prior to June 14, 2014 are therefore barred by the statute of limitation. See  
28 *Order Granting, in Part, and Denying, in Part, Motion to Dismiss* pp. 7-11.

8. Mr. Martel maintains his fourth cause of action for waiting time penalties under  
NRS 608.040 and 608.050 is timely because his cause of action did not accrue until thirty  
(30) days after his last day of work.

1           9.       Based on its plain language, NRS 608.050 is inapplicable to Mr. Martel.  
2       Section 608.050 applies to employees who are discharged or laid off by their employer.  
3       See NRS 608.050(1). Mr. Martel resigned from his job.

4           10.      Section 608.040 of the Nevada Revised Statutes does not apply to wages that  
5       are not accrued during the final pay period of the employee.

6           11.      No shift jamming, no off-the-clock banking, and no pre-shift meetings occurred  
7       during Mr. Martel's final pay period. Mr. Martel's last shift ended on June 13, 2014.

8           12.      Therefore, the two-year statute of limitation applies to Mr. Martel's claims.  
9       The *Complaint* was filed on June 14, 2016.

10          13.      NRS 608.040 does not save Mr. Martel's claims. "[W]hen a statute 'is clear on  
11       its face, a court cannot go beyond the statute in determining legislative intent.'" State v.  
12       Lucero, 249 P.3d 1226, 1228 (2011) (citing Robert E. v. Justice Court, 99 Nev. 443, 445  
13       (1983)). The Court finds NRS 608.040 is clear on its face that it does not apply to all wages,  
14       but rather wages due for the pay period before the employee is discharged or quits.  
15       Nothing in the statute indicates the rule applies to previously unpaid wages or exists to  
16       create a cause of action for those wages.

17          14.      The two-year statute of limitation applies to: Plaintiffs' First Cause of Action for  
18       Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016;  
19       Second Cause of Action for Failure to Pay Minimum Wages in Violation of the Nevada  
20       Constitution; Third Cause of Action for Failure to Pay Overtime Wages in Violation of NRS  
21       608.140 and 608.018; and, Fourth Cause of Action for Failure to Timely Pay All Wages Due  
22       and Owing Upon Termination Pursuant to NRS 608.140 and 608.020-.050.

1           15. Defendants met their burden and established their statute of limitation defense  
2 to Plaintiffs' claims as a matter of law.

3           16. Summary judgment should be entered on each of Mr. Martel's claims as they  
4 are time-barred.

5           17. After application of the two-year statute of limitation, Ms. Jackson-Williams'  
6 claims remain for an eighteen-month period only.

7  
8           **B. CBA VALIDITY AND ABILITY TO PROVIDE OTHERWISE FOR OVERTIME**

9           **1. Validity of the CBA**

10           18. The CBA purportedly expired by its own terms on or about May 1, 2011. The  
11 CBA has not been extended by signature, however, GSR contends the CBA has been  
12 extended by ratification.

13           19. Unsigned CBAs have been found valid and operative when an employer has  
14 continued to treat the CBA as binding and effective and employee could not point to  
15 evidence to the contrary. Bloom v. Universal City Studios, 933 F.2d 1013, 1991 WL 80602  
16 at \*1 (9th Cir. 1991) (unpublished); See Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc., 369  
17 U.S. 17, 24 n. 6 (1962) (finding CBA valid even when parties did not negotiate directly and  
18 did not consolidate signatures on one document).

19           20. A union will generally be held defunct if it has ceased to exist as an effective  
20 labor organization and is no long fulfilling responsibilities in administering the contract.  
21 Hershey Chocolate Corp., 121 NLRB 901, 911, 42 LRRM 1460 (1958); see also Pioneer Inn  
22 Associates v. N.L.R.B., 578 F.2d 835, 839-40 (1978) (explaining inactivity, failure to monitor  
23 contract provisions, and failure to pursue grievances may indicate a failure to administer the  
24 contract).



1           21.     Signatures on collective bargaining agreements are “not a prerequisite to  
2 finding an employer bound to that agreement.” Line Const. Ben. Fund v. Allied Elec.  
3 Contractors, Inc., 591 F.3d 576, 580 (7th Cir. 2010); N.L.R.B. v. Electra-Food Mach. Inc.,  
4 621 F.2d 956, 958 (9th Cir. 1980) (holding oral agreements are sufficient to create binding  
5 collective bargaining agreements even when written agreement is unsigned); N.L.R.B. v.  
6 Haberman Const. Co., 641 F.2d 351, 356 (5th Cir. 1981) (en banc) (“[A] union and  
7 employer’s adoption of a labor contract is not dependent on the reduction to writing of their  
8 intention to be bound”).  
9  
10

11           22.     If the union and the employer continue to operate as if the CBA is operative,  
12 the CBA is binding. Here, the union and GSR engaged in arbitration and negotiation when  
13 mandated by the CBA. GSR continued to negotiate and arbitrate with the union on multiple  
14 occasions. For example, Mr. Montrose confirmed he interacts with the Culinary Union  
15 Representative Nicolaza De La Puente weekly and he was notified of at least two different  
16 grievances in 2015. *Motion*, Decl. of Larry Montrose, Ex B., Ex. C. The CBA was “ratified  
17 by the Union on November 17, 2011, and it was in effect through March 10, 2018, when a  
18 subsequent Culinary CBA was ratified.” *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. An  
19 arbitration was held on August 25, 2016, in which the parties introduced the CBA as Joint  
20 Exhibit 1. *Motion*, Decl. of Susan Heaney Hilden, ¶ 2. Following the August 25, 2016,  
21 arbitration, the Culinary Union submitted a Post-Hearing Brief dated October 24, 2016 in  
22 which the Union states, “Local 226 has been party to three successive collective-bargaining  
23 agreements at the hotel casino that is now known as the Grand Sierra Resort.” *Id.* Plaintiffs  
24 contend the CBA expired in May of 2011 but provide the Court with no evidence to dispute  
25  
26  
27  
28

1 that the union and the GSR continued to treat the CBA as binding. Undisputed evidence  
2 confirms the CBA was valid and operative.

3 **2. The CBA “provides otherwise” for overtime**

4  
5 23. NRS 608.018(1)-(2) governs compensation for overtime and reads:

6 1. An employer shall pay 1 1/2 times an employee's regular wage rate  
7 whenever an employee who receives compensation for employment at a rate  
8 less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:

9 (a) More than 40 hours in any scheduled week of work; or

10 (b) More than 8 hours in any workday unless by mutual agreement the  
11 employee works a scheduled 10 hours per day for 4 calendar days within any  
12 scheduled week of work.

13 2. An employer shall pay 1 1/2 times an employee's regular wage rate  
14 whenever an employee who receives compensation for employment at a rate  
15 not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works  
16 more than 40 hours in any scheduled week of work.

17 NRS 608.018(1)-(2).

18 24. Section 608.018(3) of the Nevada Revised Statutes provides, “[t]he provisions  
19 of subsections 1 and 2 do not apply to . . . (e) Employees covered by collective bargaining  
20 agreements which provide otherwise for overtime . . .” NRS 608.018(3) (emphasis added).

21 25. The CBA provides:

22 The workweek pay period shall be from Friday through Thursday. For the  
23 purposes of computing overtime, for an employee scheduled to work five (5)  
24 days in one (1) workweek, any hours in excess of eight (8) hours in a day or  
25 forty (40) hours in a week shall constitute overtime. For an employee  
26 scheduled to work four (4) days in one (1) workweek, any hours worked in  
27 excess of ten (10) hours in a day or forty (40) hours in a week shall constitute  
28 overtime. Overtime shall be effective and paid only after the total number of  
hours not worked due to early ours is first subtracted from the total number of  
hours actually worked per shift, per workweek. Overtime shall not be paid  
under this Section for more than one (1) reason for the same hours worked.  
Employees absent for personal reasons on one (1) or more of their first five (5)  
scheduled days of work in their workweek shall work at the Employer’s request  
on a scheduled day off in the same workweek at straight time. If the employer  
anticipates such scheduling, the Employer provide five (5) days’ advance  
notice.

1 This provision will remain in effect for the duration of this Agreement.  
2 However, at the expiration of the Agreement, the Employer shall have the  
3 right to compute and pay overtime in accordance with the provisions of  
4 existing federal and state law, and Union employees shall not have the right  
to overtime pay above and beyond the applicable federal and state law  
requirements.

5 See Motion, Ex. 2A, p. 15.

6 26. CBAs “provide otherwise” for overtime payments when the CBA “contains a  
7 negotiated provision on the same subject but different from the statutory provision.”  
8 Firestone v. Southern California Gas Co., 219 F.3d 1063, 1067, 164 L.R.R.M. 2897, 2897  
9 (9th Cir. 2000); Jacobs v. Mandalay Corp., 378 F. App’x 685, 687 (9th Cir. 2010) (“[S]ection  
10 608.018 exempts from coverage those employees ‘covered by collective bargaining  
11 agreements which provide otherwise for overtime.’”).  
12

13 27. The instant CBA “provides otherwise” for overtime. The CBA provides  
14 otherwise for overtime because there are differences in both the practical effects of the  
15 overtime provisions in NRS 608.018 and in the CBA’s overtime provisions, as well as the  
16 textual provisions. For example, NRS 608.018(1) provides that an employer shall pay 1 1/2  
17 times the employee’s regular wage when the employee works more than 40 hours in a week  
18 or more than 8 hours in a day. The CBA does not specify what the pay rate shall be.  
19 Additionally, the CBA provides for overtime regardless of the employee’s wage, while NRS  
20 608.018 only mandates overtime for employees making more than 1 1/2 the minimum wage.  
21 NRS 608.018 provides overtime regardless of how many days are worked in a week, while  
22 the CBA allows overtime only when employees work five days in one workweek. NRS  
23 608.018 does not limit overtime if an employee misses a scheduled day and works an  
24 alternate day, however, the CBA does. Accordingly, the CBA “provides otherwise” for  
25 overtime.  
26  
27  
28

1           28.     The CBA “provides otherwise” for Ms. Jackson-Williams’ claim for overtime  
2 and NRS 608.018 does not provide a legal basis for her claim.

3           **3.     Grievance Procedures of the Culinary CBA**

4           29.     Section 301 of the Labor Management Relations Act states:

5                 Suits for violation of contracts between an employer and a labor organization  
6                 representing employees in an industry affecting commerce ... may be brought  
7                 in any district court of the United States having jurisdiction of the parties....

8           Labor Management Relations Act of 1947 § 301(a), 29 U.S.C. § 185(a) (1982).

9           30.     Employees may pursue claims for unpaid wages through a private cause of  
10           action and without enforcing the claim through the Labor Commissioner. Neville v. Eighth  
11           Judicial Dist. Court in & for Cty. of Clark, 133 Nev. 777, 782, 406 P.3d 499, 504 (2017).

12           31.     State law rights and obligations that do not exist independently of private  
13           agreements can be waived or altered by agreement as a result and are pre-empted by  
14           those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 517, 728 P.2d  
15           821, 824 (1986) (citing Allis Chalmers v. Lueck, 471 U.S. 202, 105 S.Ct. 1904 (1985)).

16           32.     Workers do not have to submit to arbitration procedures when redressing  
17           grievances because a CBA provides contractual rights, but workers may have an  
18           independent statutory right to enforce individual rights. Albertson’s, Inc. v. United Food &  
19           Commercial Workers Union, ALF-CIO & CLC, 157 F.3d 758, 762 (9th Cir.).

20           33.     Whether Ms. Jackson-Williams must follow the grievance procedures  
21           contained in the CBA depends on whether she has an independent statutory right to enforce  
22           her claims for wages and overtime outside of the CBA. Ms. Jackson-Williams brought  
23           claims for Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and  
24           608.016, Failure to Pay Overtime Wages in Violation of the Nevada Constitution, Failure to  
25           Pay Minimum Wages in Violation of NRS 608.140 and 608.018, and Failure to Pay All

1 Wages Due and Owing Upon Termination Pursuant to NRS 608.140 and 608-040-050. The  
2 State of Nevada provides independent statutory rights to each of Ms. Jackson-Williams'  
3 claims through the Nevada Revised Statutes and the Nevada Constitution. Albertson's Inc.  
4 explains, "in filing a lawsuit under [a statute], an employee asserts independent statutory  
5 rights . . . The distinctly separate nature of these contractual and statutory rights is not  
6 vitiated merely because both were violated as a result of the same factual occurrence." 157  
7 F.3d at 761. Since there are state-law rights at issue, Ms. Jackson-Williams' claims are not  
8 preempted, and the claims are not mandated to proceed through the grievance procedure of  
9 the CBA.  
10  
11

12 **4. Lack of Standing to Represent Union Employees**

13 34. Section 159(a) of the United States Code states:

14 Representatives designated or selected for the purposes of collective  
15 bargaining by the majority of the employees in a unit appropriate for such  
16 purposes, shall be the exclusive representatives of all the employees in  
17 such unit for the purposes of collective bargaining in respect to rates of pay,  
wages, hours of employment, or other conditions of employment.

18 29 U.S.C. § 159(a).

19 35. Baristas, bartenders, and cocktail servers are represented by the Culinary  
20 CBA; construction workers are covered by the Operating Engineers CBA; and, technicians  
21 are represented by the AFL-CIO Local Union. Plaintiffs, as members of the "shift jamming  
22 class" attempt to represent union members from other sub-classes.  
23

24 36. Employees may bring an action against an employer without exhausting  
25 contractual remedies, but the employees must "prove that the union as bargaining agent  
26 breached its duty of fair representation in its handling of the employee's grievance." Vaca v.  
27 Sipes, 386 U.S. 171, 186, 87 S.Ct. 903, 914 (1967).  
28

1           37. When employees sue to vindicate “uniquely personal rights” as opposed to  
2 rights reserved to unions like picketing, renegotiating a contract, or protesting relocation, the  
3 employees have standing to sue on their own behalf and on behalf of other union members.  
4  
5 Lucas v. Bechtel Corp., 633 F.2d 757, 759 (9th Cir. 1980) (citing Hines v. Anchor Motor  
6 Freight, Inc., 424 U.S. 554, 562, 96 S.Ct. 1048, 1055 (1976)).

7           38. In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh Circuit  
8 held that where a “suit is at its core about the adequacy of the wages [the employer] pays,”  
9 individual employees may not represent union workers in a class action when the union has  
10 not breached its duty of fair representation.” The court reasoned union workers “have a  
11 representative—one that under the NLRA is supposed to be ‘exclusive’ with respect to  
12 wages” and therefore “Plaintiffs’ request to proceed on behalf of a class of all workers  
13 shows that they seek to usurp the union’s role.” Id. at 686, 690.

14  
15           39. Plaintiffs do not assert the Union has breached its duty of fair representation.  
16 The CBA is valid and operative. Plaintiffs cannot represent those other union members who  
17 are represented by separate unions without asserting those union representatives breached  
18 their duty of fair representation.  
19

20           **C. PLAINTIFFS’ REQUEST FOR ADDITIONAL DISCOVERY**  
21           **PURSUANT TO NRCP 56.**

22           40. Nevada Rules of Civil Procedure Rule 56 provides:

- 23           (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant  
24 shows by affidavit or declaration that, for specified reasons, it cannot  
25 present facts essential to justify its opposition, the court may:  
26           (1) defer considering the motion or deny it;  
27           (2) allow time to obtain affidavits or declarations or to take discovery; or  
28           (3) issue any other appropriate order.

NRCP 56(d).

41. A party opposing summary judgment pursuant to NRCP 56(d) has the burden of affirmatively demonstrating by a good-faith affidavit (1) the identification of the specific facts that further discovery would reveal; (2) the specific reasons why such evidence is presently unavailable; and (3) how those facts would preclude summary judgment. Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortgage Corp., 525 F.3d 822, 827 (9th Cir. 2008); Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 657, 669-70, 262 P.3d 705, 714 (2011).

42. Plaintiffs request additional discovery to ascertain whether the CBA is valid or not. Plaintiffs have not provided an affidavit, have not articulated the specific reasons why the evidence they need is unavailable to them, and have not stated how those facts would preclude summary judgment.

## V. CONCLUSION AND ORDER.

Based on the foregoing findings of fact and conclusions of law and good cause appearing therefore,

IT IS HEREBY ORDERED summary judgment is entered in favor of GSR and against the Plaintiffs.

DATED this 2nd day of November, 2020.

DISTRICT JUDGE

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## EXHIBIT 2

*June 7, 2019 Order Granting in Part and Denying in Part  
Defendants' Motion to Dismiss*

## EXHIBIT 2

1 CODE NO. 3370  
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5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 EDDY MARTEL (also known as MARTEL-  
10 RODRIGUEZ), MARY ANNE CAPILLA,  
11 JANICE JACKSON-WILLIAMS and WHITNEY  
12 VAUGHAN on behalf of themselves and all  
13 others similarly situated,

Case No. CV16-01264

Dept. No. 6

14 Plaintiffs,

15 vs.

16 HG STAFFING, LLC, MEI-GSR HOLDINGS,  
17 LLC d/b/a GRAND SIERRA RESORT, and  
18 DOES 1 through 50, inclusive,

19 Defendants.  
20 \_\_\_\_\_ /

21 **ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO DISMISS**

22 Before this Court is a *Motion to Dismiss First Amended Complaint* ("Motion") filed by  
23 Defendants HG STAFFING, LLC and MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA  
24 RESORT (collectively, "GSR" unless individually referenced), by and through their counsel,  
25 Cohen|Johnson|Parker|Edwards.

26 Plaintiffs EDDY MARTEL (also known as MARTEL-RODRIGUEZ) ("Mr. Martel"),  
27 MARY ANNE CAPILLA ("Ms. Capilla"), JANICE JACKSON-WILLIAMS ("Ms. Jackson-  
28 Williams"), and WHITNEY VAUGHAN ("Ms. Vaughan") (collectively, "Plaintiffs"), on behalf of

1 themselves and all others similarly situated, filed *Plaintiffs' Opposition to Defendants' Motion*  
2 *to Dismiss Plaintiffs' First Amended Complaint* ("Opposition"), by and through their counsel,  
3 Thierman Buck, LLP. GSR filed its *Reply in Support of Motion to Dismiss Amended*  
4 *Complaint* ("Reply") and submitted the matter for decision thereafter.

6 **I. FACTUAL AND PROCEDURAL HISTORY**

7 This action arises out of an employment dispute between Plaintiffs and GSR  
8 regarding wages paid by GSR to Plaintiffs and similarly situated employees. On June 14,  
9 2016, Plaintiffs filed a *Class Action Complaint* ("Complaint") alleging GSR maintained the  
10 following policies, practices, and procedures which required various employees to perform  
11 work activities without compensation: (1) GSR's Cash Bank Policy, (2) Dance Class Policy,  
12 (3) Room Attendant Pre-Shift Policy, (4) Pre-Shift Meeting Policy, (5) Uniform Policy, and (6)  
13 Shift Jamming Policy. *Complaint*, pp. 4-8. As a result of said policies, Plaintiffs allege four  
14 causes of action against GSR: (1) Failure to Pay Wages for All Hours Worked in Violation of  
15 NRS 608.140 and 608.016, (2) Failure to Pay Minimum Wages in Violation of the Nevada  
16 Constitution, (3) Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018,  
17 and (4) Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS  
18 608.140 and 608.020-.050. *Id.*, pp. 11-15.

19 On October 9, 2018, this Court entered its *Order After Hearing Granting Defendants'*  
20 *Motion to Dismiss* ("Order"). The Court found Plaintiffs failed to provide sufficient  
21 information to support its claims, and therefore granted GSR's *Motion to Dismiss*.  
22 Thereafter, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of the Court's Order Granting*  
23 *Defendant's Motion to Dismiss or in the Alternative Leave to File an Amended Complaint*  
24 ("Motion for Reconsideration") requesting the Court reconsider its Order pursuant to NRCP  
25  
26  
27  
28

1 Rule 60(b). *Motion for Reconsideration*, p. 2. This Court entered its *Order Re Motion for*  
2 *Reconsideration* denying Plaintiffs request on the grounds they failed to state a claim but  
3 granting Plaintiffs leave to amend their *Complaint*.  
4

5 On January 29, 2019, Plaintiffs filed their *First Amended Complaint* ("FAC") asserting  
6 the same four (4) claims. Thereafter, GSR filed the instant *Motion* requesting this Court  
7 dismiss the FAC pursuant to NRCP 12(b)(5). *Motion*, p. 2. GSR contends the claims  
8 asserted in the FAC "have no more merit than Plaintiffs' original claims." *Motion*, p. 2.  
9

10 First, GSR contends all of Plaintiffs' claims asserted after June 14, 2014 are barred  
11 by the two-year statute of limitations pursuant to NRS 608.260. *Motion*, p. 5. GSR asserts  
12 the Nevada Supreme Court held claims made under the Minimum Wage Amendment  
13 ("MWA") are governed by a two-year statute of limitations. *Motion*, p. 5; citing Perry v.  
14 Terrible Herbst, Inc., 132 Nev. Adv. Op. 75, 383 P.3d 257, 260-62 (2016). GSR further  
15 asserts, all individual and class claims brought prior to June 14, 2014 are not tolled pursuant  
16 to Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev.  
17 2017) and China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1804 (2018). *Motion*, p. 9.  
18

19 Second, GSR maintains Plaintiffs' First, Third, and Fourth claims should be  
20 dismissed for failure to exhaust administrative remedies with the labor commissioner as  
21 required by NRS Chapter 607. *Motion*, p. 11. GSR argues Plaintiffs were required to first  
22 file and pursue their state law wage claims with the Nevada Labor Commissioner before  
23 seeking relief from this Court. *Motion*, p. 11; citing NRS 608.016; Allstate Ins. Co. v.  
24 Thrope, 123 Nev. 565, 571-72, 170 P.3d 989, 993-94 (2007).  
25

26 Third, GSR argues Plaintiffs First, Third, and Fourth Claims for Relief should be  
27 dismissed for failing to make good faith attempt to collect their wages before filing their claim  
28

1 for wages with the Court. *Motion*, p. 13; citing NAC 608.155(1).

2 Fourth, GSR asserts Plaintiffs lack standing to represent union employees because  
3 they are exclusively represented by their respective unions pursuant to 29 U.S.C.A Section  
4 159(a). *Motion*, p. 14.

5  
6 Fifth, GSR contends Plaintiffs have again failed to state a claim for wages, including  
7 minimum wages. *Motion*, p. 15. GSR argues Plaintiff do no allege any facts which would  
8 show that any plaintiff was paid less than the minimum wage and do not allege how much  
9 they were paid in any week. *Motion*, p. 16. GSR asserts Plaintiffs failure to claim how much  
10 they worked in a week results in mere speculation as to whether Plaintiffs were underpaid.  
11 *Motion*, p. 16.

12  
13 Sixth, GSR maintains Ms. Jackson-Williams' claims for wages and overtime are  
14 barred for failing to exhaust grievance procedures of the collective bargaining agreement.  
15 *Motion*, p. 17. GSR argues Ms. Jackson-Williams is subject to a collective bargaining  
16 agreement and, therefore, her statutory claims for wages or overtime are dependent upon  
17 finding a breach of that agreement to maintain those claims. *Motion*, p. 18. Moreover, GSR  
18 asserts Ms. Jackson-Williams is not entitled to overtime pursuant to NRS 608.018 because  
19 the collective bargaining agreement provides otherwise. *Motion*, p. 19.

20  
21 Seventh, GSR contends Plaintiffs' claims are barred by claim and issue preclusion.  
22 *Motion*, p. 20. GSR maintains United States District Judge Hicks already determined  
23 Plaintiffs' wage claims cannot proceed in a class action; and, they are therefore barred from  
24 re-litigating the federal district court's judgment denying class certification. *Motion*, p. 2;  
25 citing Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008).  
26  
27 Lastly, GSR argues Plaintiffs should not be able to re-litigate the federal action on principles  
28

1 of comity and the first-to-file rule. *Motion*, p. 23.

2 In their *Opposition*, Plaintiffs first maintain they are not required to exhaust  
3 administrative remedies with the Office of the Labor Commissioner prior to filing suit.  
4 *Opposition*, p. 7; citing Neville v. Terrible Herbst, Inc., 133 Nev. Adv. Op. 95, 406 P.3d 499,  
5 504 (Dec. 7 2017).  
6

7 Second, Plaintiffs assert they meet the pleading standard because they alleged  
8 specific work activities for which they are not paid their minimum wage, provided estimated  
9 damages owed to Plaintiffs and the putative classes, and provided documentary evidence in  
10 their possession and control specifying hours, dates, and times worked without pay.  
11 *Opposition*, p. 9.  
12

13 Third, Plaintiffs maintain their claims are not barred by issue or claim preclusion  
14 because their Nevada wage claims were not certified in the Sargant action. *Opposition*, p.  
15 13. Specifically, the federal court never reached determination of the state law claims  
16 because it dismissed them on the “incorrect premise” that Nevada employees do not have a  
17 private right of action for wage claims, at summary judgment, and prior to the court’s  
18 decertification order. *Opposition*, p. 13.  
19

20 Fourth, Plaintiffs contend its claims are not barred by any statutes of limitation.  
21 *Opposition*, p. 22. Plaintiffs contend NRS 11.190(3)(a)’s three-year statute of limitation for  
22 “an action upon liability created by statute, other than a penalty or forfeiture” applies to this  
23 action because NRS Chapter 608 lacks an express limitation period and NRS 11.190  
24 provides the three-year statute of limitation applies “unless further limited by specific statute.  
25 . . .” *Opposition*, p. 22; citing NRS 11.190.  
26

27 //

1 Plaintiffs further contend Defendants reliance on Perry is impermissibly broad  
2 because the Court did not hold a two-year statute of limitation period applicable to the  
3 Minimum Wage Amendment, extended to NRS 608 private causes of action claims.  
4 *Opposition*, p. 23.

5  
6 Fifth, Plaintiffs maintain their claims are not preempted by any alleged collective  
7 bargaining agreement because they are only trying to enforce the statutory obligation to pay  
8 overtime. *Opposition*, p. 29.

9  
10 In their *Reply*, Defendants reiterate that a two-year statute of limitations applies to the  
11 claims. *Reply*, p. 2. Defendants assert Plaintiffs concede they did not exhaust  
12 administrative remedies or grievance procedures. *Reply*, p. 3. Lastly, Defendants assert  
13 Plaintiff do not address or dispute that they are not entitled to seek class certification on  
14 behalf of GSR employees represented by a union. *Reply*, p. 3.

15  
16 **II. STANDARD OF REVIEW; LAW AND ANALYSIS**

17 A complaint should be dismissed under NRCP 12(b)(5) “only if it appears beyond a  
18 doubt” that the plaintiff is entitled to no relief under any set of facts that could be proved in  
19 support of the claim. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181  
20 P.3d 670, 672 (2008); Blackjack Bonding v. City of Las Vegas Mun. Court, 116 Nev. 1213,  
21 1217, 14 P.3d 1275, 1278 (2000). When analyzing the merits of a 12(b)(5) motion to  
22 dismiss, the court recognizes all of the factual allegations in the plaintiff’s complaint as true,  
23 and draws all inferences in favor of the non-moving party. *Id.* Dismissal is appropriate  
24 “where the allegations are insufficient to establish the elements of a claim for relief.”  
25 Stockmeier v. Nevada Dept. of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183  
26 P.3d 133, 135 (2008); see also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353  
27  
28

1 P.3d 1203, 1210 (2015) (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he  
2 test for determining whether the allegations of a cause of action are sufficient to assert a  
3 claim for relief is whether the allegations give fair notice of the nature and basis of the claim  
4 and the relief requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408  
5 (1984); W. States Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992);  
6 NRCP 8.  
7

8 **A. All Claims Accruing Prior to June 14, 2014 are Barred by the Statute of**  
9 **Limitations**

10 **1. A Two-Year Statute of Limitations Applies to all Claims**

11 The Minimum Wage Act (MWA) guarantees employees payment of a specified  
12 minimum wage and gives an employee whose employer violates the MWA the right to bring  
13 an action against his or her employer in Nevada. Perry v. Terrible Herbst, Inc., 383 P.3d  
14 257, 258 (Nev. 2016). A two-year statute of limitation applies to actions for failure to pay the  
15 minimum wage in violation of the Nevada constitution. Id. at 262. This two-year statute of  
16 limitation period applies to NRS 608 statutory wage claims that are analogous to a cause of  
17 action for failure to pay an employee the lawful minimum wage. Id. Accordingly, a two-year  
18 statute of limitation applies to: Plaintiffs' First Cause of Action for Failure to Pay Wages for  
19 All Hours Worked in Violation of NRS 608.140 and 608.016; Second Cause of Action for  
20 Failure to Pay Minimum Wages in Violation of the Nevada Constitution; Third Cause of  
21 Action for Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018; and,  
22 Fourth Cause of Action for Failure to Timely Pay All Wages Due and Owing Upon  
23 Termination Pursuant to NRS 608.140 and 608.020-.050.  
24  
25  
26

27 //

28 //



## 2. Cross Jurisdictional Tolling Does Not Apply

Class-action tolling suspends the statutes of limitation for all purported members of the class until a formal decision on class certification has been made, or until the individual plaintiff opts out of the class. Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev. 2017). Cross-jurisdictional class-action tolling suspends the statutes of limitation for all purported class members even if the class action was pending in a different jurisdiction than where the later suit is brought. Id.

The United States Supreme Court in American Pipe held the timely filing of a class action tolls the applicable statutes of limitation for all persons encompassed by the class complaint. The Court further ruled that, where class action status has been denied, members of the failed class could timely intervene as individual plaintiffs in the still-pending action, shorn of its class character.

Recently, however, the United State Supreme Court declined to apply American Pipe tolling to successive class action claims, holding the maintenance of a follow-on class action past the expiration of the statute of limitations is not permitted. China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1803, 201 L. Ed. 2d 123 (2018). The Court explained that allowing tolling for successive class actions would allow the statute of limitation to be extended time and again; as each class is denied certification, a new named plaintiff could file a class complaint that resuscitates the litigation. Id.

Whether cross-jurisdictional tolling applies to a case like the present case is an issue that has not yet been decided by the Nevada Supreme Court. See Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 407 P.3d 702 (Nev. 2017). In Achron Corp, the Court declined to consider the issue, finding an advisory mandamus was not warranted because the issue was not raised in the district court. Id. Nevertheless, the case presented

1 compelling grounds to refrain from recognizing cross-jurisdictional tolling. Specifically,  
2 cross-jurisdictional class-action tolling would allow the federal judiciary's actions to  
3 indefinitely extend the statutes of limitation beyond a five-year period of repose under NRS  
4 11.500. *Id.* Moreover, Achron Corp was considered before the United States Supreme  
5 Court's decision in China Agritech, Inc.

6 This issue has been similarly addressed in regards to individual actions. In Clemens  
7 v. Daimler Chrysler Corp., 534 F.3d 1017, 1025 (9th Cir. 2008), the Ninth Circuit held  
8 American Pipe does not "mandate cross-jurisdictional tolling as a matter of state procedure."  
9 The Illinois Supreme Court addressed this issue in Portwood v. Ford Motor Co., 701 N.E.2d  
10 1102, 1103-05 (Ill. 1998), holding a state "statute of limitations is not tolled during the  
11 pendency of a class action in federal court," even though the court had previously "adopted  
12 the American Pipe rule for class actions filed in Illinois state court." The Court reasoned  
13 such cross-jurisdictional tolling of a state statute of limitation would "increase the burden on  
14 that state's court system" because it would expose the state court system to the evils of  
15 "forum shopping." *Id.* at 1104. The court further found that because "state courts have no  
16 control over the work of the federal judiciary, . . . [s]tate courts should not be required to  
17 entertain stale claims simply because the controlling statute of limitations expired while a  
18 federal court considered whether to certify a class action." *Id.* at 1104.  
19  
20  
21

22 Moreover, pursuant to NRS 11.500, the Nevada Legislature has determined that a  
23 statute of limitation should only be tolled based on an action filed in another jurisdiction  
24 when "the court lacked jurisdiction over the subject matter of the action," (which it did not  
25 here), and then limited tolling to "[n]inety days after the action is dismissed."  
26

27 Here, Plaintiffs filed their *Complaint* on June 14, 2016. As such, all claims accruing  
28 before June 14, 2014 are barred unless cross-jurisdictional tolling applies. Under the

1 unique facts of this case, the Court finds cross-jurisdictional tolling does not apply. The  
2 Court looks to the history of this litigation. Specifically, Plaintiffs in this case previously  
3 brought a substantially similar action in the Second Judicial District Court for the State of  
4 Nevada. The case was removed to federal court where class certification was denied and  
5 the case dismissed. Plaintiffs again seek recourse in the Second Judicial District Court and  
6 assert their claims were tolled by the federal action.

7 To permit tolling claims under these specific circumstances provides for never-ending  
8 successive class actions because the statute of limitation would never expire. Newly named  
9 plaintiffs could always file a class complaint that would resurrect the litigation. Accordingly,  
10 class action claims shouldn't be tolled. Therefore, all of Plaintiffs' class action claims that  
11 accrued prior to June 14, 2014, two (2) years before Plaintiffs filed their *Complaint*, are  
12 barred and shall be dismissed.

13 Plaintiffs' *Complaint* alleges that Plaintiff Capilla was employed by GSR from "March  
14 2011" to "September 2013;" Plaintiff Vaughan was employed by GSR from "August 2012"  
15 through "June 2013;" Plaintiff Martel was employed by GSR from "January 2012" to "July  
16 2014;" and Plaintiff Williams was employed by GSR from "April 2014" to "December 2015."  
17 See Complaint at 3, ¶¶ 5 - 8. Accordingly, all of Ms. Capilla and Ms. Vaughan's claims, all  
18 but one (1) month of Mr. Martel's claims, and all but eighteen (18) months of Ms. Jackson-  
19 Williams' claims are dismissed.

## 22 B. Remaining Claims

23 Two Plaintiffs remain pursuant to this Court's dismissal of all claims accrued prior to  
24 June 14, 2016. First, Mr. Martel's claims regarding a one-month period remains; and,  
25 second, Ms. Jackson-Williams' claims remains regarding an eighteen months period. GSR  
26 assert the remaining claims should be dismissed for (1) failure to exhaust administrative  
27 remedies of the collective bargaining agreement; (2) issue preclusion; (3) claim preclusion;  
28 (4) lack of standing to represent union employees; and, (5) failure to state a claim.

1 The Court addresses each argument in turn.

2 **1. Mr. Martel and Ms. Jackson-Williams are not Required to Exhaust**  
3 **Administrative Remedies**

4 Where an administrative agency has exclusive jurisdiction over statutory claims, the  
5 failure to exhaust administrative remedies before proceeding in district court renders the  
6 matter unripe for district court review. Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170  
7 P.3d 989, 993 (2007). A private cause of action generally cannot be implied when an  
8 administrative official is expressly charged with enforcing a section of laws. Baldonado v.  
9 Wynn Las Vegas, LLC, 124 Nev. 951, 194 P.3d 96 (2008). However, the Nevada Supreme  
10 Court has determined an employee has a private right to pursue claims for unpaid wages  
11 pursuant to NRS 608.140. Neville v. Eighth Judicial Dist. Court in & for Cty. of Clark, 406  
12 P.3d 499, 504 (Nev. 2017). As such, the Labor Commissioner does not have exclusive  
13 jurisdiction over statutory claims. Therefore, Plaintiffs were not required to exhaust  
14 administrative remedies before proceeding to district court.

17 **2. Issue and Claim Preclusion Does not Apply**

18 In Five Star Capital Corp. v. Ruby, the Nevada Supreme Court set forth a three-part  
19 test for determining whether claim preclusion applies to a later action: (1) [T]he parties or  
20 their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is  
21 based on the same claims or any part of them that were or could have been brought in the  
22 first case. 124 Nev. at 1054. In Five Star Capital Corp., the Court reasoned, claim  
23 preclusion applies to preclude an entire second suit that is based on the same set of facts  
24 and circumstances as the first suit. Id.

25 The Court also set forth a four-part test for determining whether issue preclusion  
26 applies to a later action:  
27  
28

1 (1) the issue decided in the prior litigation must be identical to the issue  
2 presented in the current action; (2) **the initial ruling must have been on the**  
3 **merits and have become final**; ... (3) the party against whom the judgment is  
4 asserted must have been a party or in privity with a party to the prior litigation";  
5 and (4) the issue was actually and necessarily litigated.

6 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (citations omitted) (emphasis added).

7 Here, class certification was never addressed in Sargent for the Nevada wage claims  
8 and the Court in Sargent has since reversed the grant of summary judgment in light of  
9 Neville. There is no issue or claim preclusion because class certification was never  
10 independently decided; there has been no ruling on the merits of any of the employees'  
11 FLSA or Nevada wage claims; and, the Plaintiffs' NRS 608 and Nevada Constitution  
12 minimum wage claims have not actually and necessarily been litigated.

### 13 3. Standing to Represent Union Employees

14 Pursuant to 29 U.S.C. § 159(a),

15 Representatives designated or selected for the purposes of collective  
16 bargaining by the majority of the employees in a unit appropriate for such  
17 purposes, shall be the exclusive representatives of all the employees in such  
18 unit for the purposes of collective bargaining in respect to rates of pay, wages,  
19 hours of employment, or other conditions of employment.

20 29 U.S.C. § 159(a). In Baker v. IBP, Inc., 357 F.3d 685, 690 (7th Cir. 2004), the Seventh  
21 Circuit held that where a "suit is at its core about the adequacy of the wages [the employer]  
22 pays," individual employees may not represent union workers in a class action when the  
23 Union has not breached its duty of fair representation.

24 The court reasoned that union workers "have a representative—one that under the  
25 NLRA is supposed to be 'exclusive' with respect to wages" and therefore "Plaintiffs' request  
26 to proceed on behalf of a class of all workers shows that they seek to usurp the union's  
27 role." Id. at 686, 690. Moreover, state law rights and obligations that do not exist  
28

1 independently of private agreements, and that can be waived or altered by agreement as a  
2 result, are pre-empted by those agreements. MGM Grand Hotel-Reno, Inc. v. Insley, 102  
3 Nev. 513, 517, 728 P.2d 821, 824 (1986).

4  
5 Plaintiffs do not dispute that they may not pursue class actions on behalf of union  
6 employees because they are not union representatives, who have the exclusive right to  
7 represent members of the union with respect wage. However, Plaintiffs dispute that an  
8 enforceable collective bargaining agreement was in place. Specifically, Plaintiffs argue that:  
9 (1) the CBA is not valid and has expired by its own terms on or about May 1, 2011 (over  
10 seven years ago); (2) because it has expired and no subsequent CBA has been ratified or  
11 signed, Plaintiffs may sue in this Court for unpaid wages, overtime wages, and penalties  
12 due; and, (3) even if the CBA was valid it does not provide otherwise for overtime wages  
13 and Plaintiffs may bring their claims in this Court. See Opposition, generally. The Court  
14 declines to consider evidence, such as the collective bargaining agreement, outside the  
15 pleadings at this time.<sup>1</sup> Considering the claims in Plaintiffs' *Complaint* as true, and drawing  
16  
17 all conclusions in favor of the Plaintiffs, dismissal is not appropriate on these grounds.  
18

#### 19 4. Failure to State a Claim

20 As stated dismissal is appropriate pursuant to NRCP 12(b)(5) "where the allegations  
21 are insufficient to establish the elements of a claim for relief." Stockmeier v. Nevada Dept.  
22 of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008); see  
23 also Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1210 (2015)  
24 (same). Nevada is a notice-pleading jurisdiction, therefore, "[t]he test for determining  
25 whether the allegations of a cause of action are sufficient to assert a claim for relief is  
26 whether the allegations give fair notice of the nature and basis of the claim and the relief  
27  
28

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<sup>1</sup> The Court notes this issue may be more appropriate for a motion for summary judgment.

1 requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984); W. States  
2 Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992); NRCP 8.

3 Plaintiffs filed their *FAC* on January 29, 2019. This Court finds Plaintiffs have  
4 provided sufficient factual allegations regarding hours worked and exacting estimates of  
5 shifts and unpaid hours and for the applicable time period to put Defendants on notice of the  
6 nature and basis of the claims and relief requested. See FAC, generally.

8 **III. ORDER.**

9 The Court finds a two-year statute of limitation applies to this case. As such, the  
10 Court dismisses all of Ms. Capilla and Ms. Vaughan's claims, all but one (1) month of Mr.  
11 Martel's claims, and all but eighteen (18) months of Ms. Jackson-Williams' claims.  
12 However, the Court declines to dismiss the remaining claims at this time.

14 Based on the foregoing, and good cause appearing thereto,  
15 **IT IS HEREBY ORDERED** Defendants' *Motion to Dismiss* is GRANTED, in part, and  
16 DENIED, in part.

17 Dated this 7<sup>th</sup> day of June, 2019.

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20   
21 DISTRICT JUDGE  
22  
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;  
3 that on the 11 day of June, 2019, I electronically filed the foregoing with the Clerk of  
4 the Court system which will send a notice of electronic filing to the following:  
5

6 MARK THIERMAN, ESQ.

7 SUSAN HILDEN, ESQ.

8 H. JOHNSON, ESQ.  
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10  
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13 And, I deposited in the County mailing system for postage and mailing with the  
14 United States Postal Service in Reno, Nevada, a true and correct copy of the attached  
15 document addressed as follows  
16

17 Handwritten signature  
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CV16-01264